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A GUIDE TO
INCOME-TAX PRACTICE

BY

ADAM MURRAY

AND

ROGER N. CARTER,

Chartered Accountants,

MANCHESTER.



A GUIDE TO INCOME-TAX PRACTICE

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ADAM MURRAY & ROGER N. CARTER.
"Chartered Accountants, Manchester.

CONTAINING.

A SUMMARY OF THE VARIOUS ENACTMENTS RELATING TO INCOME-TAX; INSTRUCTIONS
AS TO THE PREPARATION OF RETURNS FOR ASSESSMENT AND ACCOUNTS
IN SUPPORT OF APPEALS ON THE GROUND OF OVER-ASSESSMENT;
ALSO FOR CLAIMING EXEMPTION AND ABATEMENT:

AND

A CONCISE POPULAR DIGEST OF THE PRINCIPAL LEGAL DECISIONS
ON THE CONSTRUCTION OF THE ACTS:

FOR THE USE OF TAXPAYERS.

SIXTH EDITION.

BY

ROGER N. CARTER, M.Com., F.C.A.

LONDON:

GEE & CO. (PUBLISHERS) LTD., 34 MOORGATE STREET, E.C.

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PREFACE TO THE FIRST EDITION.

THIS work has been undertaken in response to frequent inquiries for a Guide to Income Tax Practice, and in the expectation that it may serve to direct the public upon a difficult and complicated subject.

The endeavour has been to produce a book which, while being useful to the general public, may also be instructive to those desirous of closely examining particular points of practice. With this object in view it has been thought better to incur the risk of erring on the side of fulness rather than to omit anything which might be useful. This idea has also been before us in the preparation of the copious index, which, it is hoped, will add to the value of the work as a book of reference.

The cases quoted have been collected from the reports of the Commissioners of Inland Revenue and from the public Press, as well as from the recognised *Accountant* and other Law Reports. In every case the facts and the judgment have been cited in such detail that the reader may see the *reasons* for each decision.

The aim has been to deal with the subject as the law stands rather than to criticise the state of the law, and it has not been thought advisable to enter into controversial matters, such as the incidence of the tax and anomalies in the administration of the Acts.

We wish to acknowledge the valuable assistance derived from a perusal of Mr. Stephen Dowell's work upon "The Acts relating to Income Tax." In considering the legal construction of the Acts that work has been invaluable.

On points of practice we have made use of correspondence in *The Accountant*, and with this assistance, added to practical experience extending over a lengthened period, we trust that we have produced a work which will be found to combine accuracy with completeness.

We are, perhaps, justified in thinking that, the principal Act having now been in force for upwards of 50 years, there can be but few points which remain to be decided as regards the construction of the Acts.

It is worthy of notice that the tendency of recent legislation has been to grant further relief to the taxpayer, *e.g.*, the Act of 1890 and that of last year. We have also found that there is a willingness on the part of the Inland Revenue officials to meet exceptional cases in a liberal spirit.

We have also the satisfaction of testifying to the courteous treatment accorded to us on all occasions by Surveyors and other officials. In our experience they have ever been ready and willing to accept accounts when properly prepared and to discuss fairly any points of difficulty arising thereon, there being a desire on all occasions to assist with the fullest information for our guidance.

We believe that many people have the impression that the Surveyors derive a pecuniary advantage through increased assessments, but we are able to state emphatically that such is not the case. The Surveyors are paid by fixed salary, which is not influenced in the slightest degree by the rise or fall of the Income Tax assessments in their districts. This is also the case now with regard to *all* officials connected with the administration of the Income Tax. Up to 1890, Assessors, Collectors, and Clerks to Commissioners were paid by a poundage rate on the duty assessed or collected, but, by the Taxes (Regulation of Remuneration) Act, 1891, payment by poundage was abolished, and fixed allowances were substituted in lieu thereof. It is, therefore, plain that no person has a pecuniary interest in the increase of the assessments beyond the amount of profits properly chargeable.

In venturing to introduce the work to the favour of the public we do so in the hope that it will be found, in some measure, to fulfil the object with which it has been written.

A. MURRAY.

ROGER N. CARTER.

Manchester,

February 1895.

PREFACE TO THE SIXTH EDITION.

THE principal alteration noted in our Fifth Edition was the first attempt at differentiation—by “relief” to “earned” incomes. We think it will be generally admitted that this relief has worked well and without undue friction.

The present Edition deals with the Super-tax as the outstanding feature of legislative change. The chief difficulty of this is the obtaining of exact particulars in the absence (in most cases) of books of record.

The text of this Edition runs to considerably greater length than that of the former one. This is due largely to the full treatment which we have thought well to accord to the important cases of the *Lion Brewery* (p. 251) and *A.-G. v. Till* (p. 135).

Whilst confirming our previous view as to the courtesy and fairness of the officials, we cannot refrain from protesting against some of the points raised and which are pressed against taxpayers—sometimes successfully, at other times the reverse.

Amongst these we may mention :—

- (1) The *London County Council* case, where it has been established that occupation value cannot be set off against tax on interest payable. (p. 355.)
- (2) The *Lion Brewery* case, where the Crown has been unsuccessful in their attempt to disallow a necessary expense of business. (p. 251.)

- (3) The *General Accident Insurance, &c.*, case, where they have succeeded in establishing that all premiums received are profits, notwithstanding that they are in respect of a risk running in a future period. (p. 204.)
- (4) The new "rule" as to abatement to infants. (p. 448.)
- (5) The attempt to exact Super-tax for a year in which the taxpayer is dead. (p. 492.)

In all these cases the point (whether *legally* established in favour of the Crown or not) involves such obvious injustice that it would seem to justify the assertion that in some cases the authorities are more interested in *revenue* than in *fairness*, and have resort to claims which (as one of the Judges has said with respect to an action by a municipality), at the hands of an *individual*, would never be contemplated.

In this connection one may quote the expression of Fletcher Moulton, L.J. (p. 205), that it was painful to give the stamp of judicial authority to something which could not be supported by the practice of the most intelligent and honourable men of the mercantile community, and to a course of treatment which, if acted upon financially, would be a gross fraud.

The Income Tax as a whole is so fair and so fairly administered that one notes these cases with extreme regret.

ROGER N. CARTER.

16 *Kennedy Street, Manchester,*
November 1911.

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A Guide to Income Tax Practice.

A GUIDE TO INCOME TAX PRACTICE.

CHAPTER I.

HISTORY OF THE INCOME TAX AND EPITOME OF THE PRINCIPAL ACTS RELATING THERETO.

HAVING regard to the object of this work, namely, to provide a practical guide to the preparation of accounts in support of income tax returns and appeals, it has been thought desirable to go somewhat fully into many of the very numerous decisions on the construction of the Income Tax Acts; it has not, however, been considered needful to do more than glance at the origin and history of the income tax, which are, briefly, as follows :—

**Object and
scope of the
Work.**

In 1798 an Act was introduced by Mr. Pitt, entitled “ An Act for granting to His Majesty an aid and contribution “ for the prosecution of the war.” The effect of the Act was

**History of
Income tax
1798.
Pitt's war
tax.**

professions, and offices. Where the income was derived wholly or in part from land and houses, the tax on the whole or on such part was to be paid in full. In the guide-book published by the Tax Office at that period it is stated that many persons fraudulently brought their incomes below the £60, and the Legislature found the necessity of confining the exemption to £50, that the former returns of such persons might be made use of. By this same Act of 1806 the dividends of the public funds, which had previously been returned by the recipients as part of their income, were for the first time brought within the principle of charging income at the source. An allowance for repairs of buildings, which before existed, was at the same time taken away, and abatements previously allowed to persons with a certain number of children were likewise discontinued, but see *post*. The allowance for life assurance premiums was confined to persons whose incomes were less than £150 a year.

**History of
Income tax.**

In 1816 the tax ceased, but it was revived—not as a war tax, but for the general purposes of the country, and to facilitate certain reforms in aid of commerce—under Sir Robert Peel's Government, by the Act of 1842; and it is by this and subsequent Acts that the income tax is still governed.

**1816,
Income Tax
ceased.**

**Re-imposed
in 1842.**

The principal Acts relating to income tax are :—

**Acts relating
to Income Tax.**

The Income Tax Act 1842 (5 & 6 Vic. cap. 35), containing :—

**Act of 1842
5 & 6 Vic.
cap. 35.**

The schedules under which income was charged, since repealed and provided for in the Act of 1853.

The rules of assessment.

**Acts relating
to Income
Tax.**

Provisions for various exemptions, such as charitable institutions, &c.

Provision for exemption in respect of incomes under £150 (limited by the Act of 1853 to £100, but restored to £150 in 1876, and raised to £160 in 1894).

**Act of 1853,
16 & 17 Vic.
cap. 34**

The Income Tax Act 1853 (16 & 17 Vic. cap. 34), containing :—

The schedules under which income is charged—somewhat similar schedules under the Act of 1842 being repealed.

Provisions relating to the extension of the income tax to Ireland.

Provision for abatement of duty to persons who have insured their lives, on the amount of the premium paid, up to one-sixth of the income.

**Act of 1876,
39 & 40 Vic.
cap. 16.**

The Customs and Inland Revenue Act 1876 (39 & 40 Vic. cap 16), restoring the limit of exemption (which had been reduced to £100 by the Act of 1853) to £150; and granting an abatement of £120 to persons whose incomes were not less than £150 but were less than £400, in lieu of that previously in force under the Customs and Inland Revenue Act 1872, viz. :—to persons whose incomes were between £100 and £300. Further abatement is granted by the Acts of 1894, 1897, and 1898.

**Act of 1878,
41 & 42 Vic.
cap. 15.**

The Customs and Inland Revenue Act 1878 (41 & 42 Vic. cap 15), directing the Commissioners to allow deduction for diminished value of machinery and plant by reason of wear and tear.

- The Taxes Management Act 1880 (43 & 44 Vic. cap 19), dealing principally with the management of the tax. Acts relating to Income Tax.
Act of 1880, 43 & 44 Vic. cap. 19.
- The Customs and Inland Revenue Act 1887 (50 & 51 Vic. cap 15), allowing farmers to elect to be assessed under Schedule D instead of under Schedule B. Act of 1887, 50 & 51 Vic. cap. 15.
- The Customs and Inland Revenue Act 1890 (53 & 54 Vic. cap. 8), granting relief to trading or professional persons and farmers in case of losses. Act of 1890, 53 & 54 Vic. cap. 8.
- The Finance Act 1894 (57 & 58 Vic. cap. 30), raising the limit of exemption (as mentioned above) to incomes not exceeding £160, and granting further concessions of a like nature to those granted by the Act of 1876 (further extended in 1897 and 1898), and in respect of joint income of husband and wife; also granting an allowance under Schedule A in respect of repairs. Act of 1894, 57 & 58 Vic. cap. 30.
- The Finance Act 1896 (59 & 60 Vic. cap. 28), repealing the Acts of 1851 and 1880 as to the assessment of farming profits, and enacting similar provisions. Act of 1896, 59 & 60 Vic. cap. 28.
- The Finance Act 1897 (60 & 61 Vic. cap. 24), granting a further concession in respect of joint income of husband and wife. Act of 1897, 60 & 61 Vic. cap. 24.
- The Finance Act 1898 (61 & 62 Vic. cap. 10), granting further concessions of a like nature to those granted by the Acts of 1876 and 1894. Act of 1898, 61 & 62 Vic. cap. 10.

**Acts relating
to Income
Tax.**

**Act of 1907,
7 Ed. VII.
cap. 13.**

The Finance Act 1907 (7 Ed. VII. cap. 13), granting relief to "earned" incomes and repealing a section (133) of the Act of 1842, which had given a certain right of appeal where the profit had fallen short of the amount previously returned for assessment, also extending the time for recovery of duty and penalties by the Crown.

**Act of 1910,
10 Ed. VII.
cap. 8.**

The Finance (1909-10) Act 1910 (10 Ed. VII. cap. 8), introducing the super-tax, granting relief in respect of children, and restricting abatement, &c., formerly granted to persons resident outside the United Kingdom.

**Construction
of Taxing
Acts.
*Partington v.
The Attorney-
General.***

It may not be out of place to quote here the rule as to the construction of Taxing Acts. In the case of *Partington v. The Attorney-General* (decided in 1869), Earl Cairns, in giving judgment in the House of Lords, said :—

"As I understand the principle of all fiscal legislation it is this: If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown, seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be. In other words, if there be admissible in any statute what is called an equitable construction, certainly such a construction is not admissible in a taxing statute, where you can simply adhere to the words of the statute."

***Coltess Iron
Co. v. Black.***

In *Coltess Iron Company v. Black* (decided in 1881) Lord Blackburn, in the same tribunal, said :—

"No tax can be imposed on the subject without words in an Act of Parliament clearly showing an intention to lay a burden on him. But when an intention is sufficiently shown, it is, I think, vain to speculate on what would be the fairest and most equitable mode of levying that tax. The object of those framing a Taxing Act is to grant to Her Majesty a revenue. No doubt they would prefer, if it were possible, to raise that revenue equally from all, and, as that cannot be done, to raise it from those on whom the tax falls with as little trouble and annoyance and as equally as can be contrived; and when any enactments for the purpose can bear two interpretations, it is reasonable to put that construction on them which will produce these effects. But the object is to grant a revenue at all events, even though a possible nearer approximation to equality may be sacrificed in order more easily and certainly to raise that revenue; and I think the only safe rule is to look at the words of the enactments and see what is the intention expressed by those words."

**Construction
of Taxing
Acts.**

***Coltess Iron
Co. v. Black.***

CHAPTER II.

THE SCHEDULES UNDER WHICH INCOME TAX IS CHARGED.

THE section of the Act of 1842 containing the schedules of charge has been superseded by sec. 2 of the Act of 1853, which contains similar provisions. The properties and profits are divided and charged under five heads—Schedules A, B, C, D, and E.

- Schedule A.** Schedule A relates to the property in lands and buildings. (Chapter III.)
- Schedule B.** Schedule B is in respect of the occupation of such lands. (Chapter III.)
- Schedule C.** Schedule C comprises interest and dividends payable out of the public funds of the United Kingdom, the Colonies, or any foreign State. (Chapter IV.)
- Schedule D.** Schedule D is in respect of
- Profits accruing to a person in the United Kingdom from a trade, &c., carried on in the United Kingdom or elsewhere ;

Profits accruing to any person—although residing out of the United Kingdom—from any property in the United Kingdom or any trade carried on in the United Kingdom; **Schedule D.**

And interest of money and other annual profits not charged under any other schedule. (Chapter VI.)

Schedule E relates to annuities, salaries, &c., payable out of the public revenue, and salaries paid by public companies, and corporations. (Chapter V.) **Schedule E**

CHAPTER III.

SCHEDULES A AND B.

**Schedule A.
General
rule for
assessment
of lands and
houses.**

THE tax under Schedule A is levied on the annual value of lands, tenements, &c. (1853, sec. 2). Previous to the 5th April 1894 the assessment was the rack-rent, if such rent had been fixed by agreement commencing within seven years preceding the 5th April before the making of the assessment, but if not so let at rack-rent, then at the rack-rent at which the lands, &c., were worth to be let by the year (1842, sec. 60, Sch. A, No. 1). Now, however, the assessment, still made in this way, is governed by sec. 35 of the Finance Act 1894, which is as follows :—

**Finance Act
1894, sec. 35.**

“In respect of the income-tax hereby imposed under Schedule A, where the tax is charged upon annual value estimated otherwise than by relation to profits, the following provisions shall have effect :—

**Allowance
for repairs.**

- (a) In the case of an assessment on lands inclusive of the farmhouse and other buildings (if any) the amount of the assessment shall, for the purposes of collection, be reduced by a sum equal to one-eighth part thereof; and
- (b) In the case of an assessment upon any house or building (except a farmhouse or building included with lands in assessment), the amount of the assessment shall, for the purposes of collection be reduced—

- (i) Where the owner is occupier or assessable as landlord, or where a tenant is occupier and the landlord undertook to bear the cost of repairs, by a sum equal to one-sixth part of that amount; and
- (ii) Where a tenant is occupier and undertook to bear the cost of repairs, by such a sum, not exceeding one-sixth of that amount, as may be necessary to reduce it to the amount of rent payable by him.
- (c) As between the owner and a mortgagee of his property, or any person having a charge thereon or entitled to any ground rent, rent charge, annuity, or other annual sum payable thereout, the owner's right of deduction under the Income Tax Acts in respect of income-tax shall be in no wise prejudiced or affected by the relief afforded by this section.
- (d) Where the amount of the assessment in the case of lands (inclusive of the farmhouse and other buildings) is more than one-eighth, and in the case of any house or building (except a farmhouse or building included with lands in assessment) is more than one-sixth below the rent, after deducting from such rent any outgoing which should by law be deducted in making the assessment, this section shall not apply."

Schedule A.
Finance Act
1904, sec. 38.

It will be observed that the effect of this section is that, in the case of an assessment of lands (including farmhouses, &c.), tax is to be paid on only seven-eighths of the annual value; and in the case of houses, &c. (exclusive of farmhouses), on five-sixths.

Some further relief is granted by the Finance Act 1910, **Finance Act 1910, sec. 69.** sec. 69, to owners of land or of small houses, viz. :—

"(1) If the owner of any land or houses to which this section applies shows that the cost to him of maintenance, repairs, insurance, and management, according to the average of the preceding five years, has exceeded, in the case of land, one-eighth part of the annual value of the land as adopted for

Schedule A.**Finance Act
1910, sec. 60.**

the purpose of income-tax under Schedule A, and in the case of houses one-sixth part of that value, he shall be entitled, in addition to any reduction of the assessment under sec. 35 of the Finance Act 1894, on making a claim for the purpose, to repayment of the amount of the duty on the excess, not exceeding in the case of land one-eighth part, and in the case of houses one-twelfth part, of the duty on an amount equal to the annual value.

For the purposes of this section the term 'maintenance' shall include the replacement of farm-houses, farm buildings, cottages, fences, and other works where the replacement is necessary to maintain the existing rent.

(2) This section shall apply to any land (inclusive of farm-houses and other buildings, if any) the assessment on which is, for the purpose of collection, reduced under sec. 35 of the Finance Act 1894, and to any houses the annual value of which, as adopted for the purpose of income-tax under Schedule A, does not exceed eight pounds, the assessment on which is so reduced.

(3) In comparing the cost of maintenance, repairs, insurance, and management of any land or houses for the purpose of this section with the annual value of the land or houses, the total cost of the maintenance, repairs, insurance, and management on any land managed as one estate, or of any houses on any such land, shall be compared with the total annual value of the land or houses as the case may be.

(4) All the provisions of the Income Tax Acts which relate to claims for exemption, relief, or abatement, or the proof to be given with respect to those claims, shall apply to claims for repayment under this section and the proof to be given with respect to those claims :

Provided that if the owner of any land or house makes and delivers to the Surveyor of Taxes of any district in which the land or house is wholly or partly situate a declaration as to the cost to him of maintenance, repairs, insurance, and management, and the Surveyor is satisfied as to the correctness of the declaration, the amount of the allowance to which the owner is entitled under this section shall be certified by the Surveyor, and repayment shall thereupon be made in accordance with his certificate.

(5) In computing the five-year average for the purposes of this section, the year shall be taken to be the year ending on the thirty-first day of March, or such other date as may be adopted by the owner of the land or houses with the consent of the Surveyor of Taxes of the district, and the five preceding years shall be taken to be those preceding the commencement of the year for which the duty in respect of which a claim for repayment is made is charged.” **Schedule A.**

Tithes, profits of manors, fines on renewals of leases, &c., are likewise chargeable under this schedule. The annual values of these respective properties are deemed to be as follows :—

Tithes, if taken in kind, and dues and money payments in right of the Church. The average amount of the profits received during the three preceding years. **Tithes taken in kind.**

Tithes, if compounded for. The profits received during the preceding year. **Tithes compounded for.**

Casual profits of manors. The average amount received during the seven preceding years. **Profits of manors.**

Fines for the renewal of leases. The amount received in the preceding year. **Fines.**

(1842, sec. 60, Schedule A, No. 11.)

In the case of fines, however, it is provided by the same section that where the party chargeable shall prove, to the satisfaction of the Commissioners, that such fines, or any part thereof, have been applied as productive capital on which a profit has arisen or will arise otherwise chargeable under the Act, for the year in which the assessment has been made, the Commissioners may discharge the amount so applied as pro-

Schedule A.

*Lord Mostyn
v. London
(Surveyor of
Taxes.)*
Productive
capital.

ductive capital from the profits which would otherwise have been liable to assessment. One case has been decided as to the interpretation of the term “productive capital” (*Lord Mostyn v. London, Surveyor of Taxes*, Queen’s Bench Division, 22nd November 1894). Under the will of Lord Mostyn’s father, all fines were, after payment of debts, to be invested as capital in the purchase of property, and the tenant-for-life had not any power to appropriate them for his own use. In 1890 fines amounting to £1,795 were received, and of this sum £906 had been placed on deposit with the London and Westminster Bank at interest, and had yielded £44. The money was placed in the bank temporarily on deposit, as received, and it remained there until required for permanent investment. The Surveyor contended that the money, having been placed on deposit temporarily, had not been applied as “productive capital” and he accordingly included the sum in his assessment. This was confirmed by the Commissioners, and Lord Mostyn appealed to the Queen’s Bench Division, it being argued on his behalf that the money had been applied as “productive capital,” and had produced £44 interest. On behalf of the Crown it was urged that if this were held to have been applied as “productive capital,” the deposit of money for a day or two would be so also, and would fall within the exemption. The Court dismissed the appeal, holding that the amount was liable to assessment. They did not consider that a mere temporary deposit while a permanent investment was determined upon, was an application as “productive capital.” The word “capital” itself rather pointed to a source of income otherwise than a mere

loan. Even if the Commissioners were wrong, they were not bound to allow the sum, as their power was discretionary.

The manner in which the annual value of, or profit arising from, certain other properties is to be estimated, is laid down in the same section. In the case of quarries of

Schedule A.
Assessment
of quarries,
mines, &c.

Stone,
Slate,
Limestone, or
Chalk,

it is deemed to be the amount of profit in the preceding year. (1842, sec. 60, Sch. A. No. III., Rule 1.) In the case of mines of

Coal,
Tin,
Lead,
Copper,
Mundic,
Iron,
and other mines,

it is deemed to be the average profit of the five preceding years. (1842, sec. 60, Sch. A. No. III., Rule 2.) If, however, the yield or output of any such mine has, from any unavoidable cause, been decreasing, so that such average will not give a fair and just estimate of the annual value thereof, the General Commissioners may compute the annual value on the amount of the profits in the preceding year; and, if the mine has wholly failed, they may discharge any assess-

Decrease in
output of
mine.

Schedule A.

ment made. (1842, sec. 60, Sch. A, No. IV., Rule 5.) See also *post* "Succession." In view of the repeal of sec. 133 this may become an important clause.

*Jones v.
Cwmorthen
Slate Co.*
Quarry or
mine?

In *Jones v. Cwmorthen Slate Co.* (Court of Appeal, 19th December 1879) it was held that where slate is obtained from the side of a hill by underground workings carried on through levels, the concern is to be assessed as a quarry (on the profits of the preceding year) and not as a mine (on the five years' average).

In the case of

**Ironworks,
gasworks, &c.**

Ironworks,
Gasworks,
Salt springs or works,
Alum mines or works,
Waterworks,
Streams of water,
Canals,
Inland navigations,
Docks,
Drains and levels,
Fishings,
Rights of markets and fairs,
Tolls,
Railways and other ways,
Bridges,
Ferries,

and other concerns of a like nature,

the annual value is to be computed on the profits of the year preceding. (1842, sec. 60, Sch. A, No. III., Rule 3.)

In *Imperial Continental Gas Association v. Nicholson* (Court of Exchequer, 12th June 1877) it was held that this section does not apply to a gasworks *abroad* belonging to a company registered in England, but that such is assessable under Schedule D.

Schedule A.
Imperial Continental Gas Association v. Nicholson.
Gasworks abroad.

The facts in *Ystradfydwg and Pontypridd Main Sewerage Board v. Bensted* (House of Lords, 18th and 19th June 1907) were as follows :—

Ystradfydwg, &c. Sewerage Board v. Bensted.

There is a sewer $17\frac{1}{4}$ miles long, two and a-half of which passes through or over land in the parish of Rumney, which land is rated for the relief of the poor. Of the two and a-half miles 182 yards is on arches above ground, 1,021 yards below, 1,890 above the surface but covered by an artificial embankment, and 1,246 (called "outfall") is partly over and partly under the foreshore of the Bristol Channel. Works have been erected in connection with the outfall. £156,000 was borrowed from the Public Works Loan Commissioners, repayable over thirty years. The proportion for Rumney was £1,210, raised by a rate. Agreements had been made with several authorities for carrying off their sewage. But for these payments the rate for Rumney would presumably have been higher, but no calculation of the cost incurred to earn the money from outside had been made.

Sewer.

The seat of management is at Pontypridd, which is not in the parish of Rumney for income tax purposes.

Schedule A.***Ystrady-
fodwg, &c.
Sewerage
Board v.
Bensted.*****Sewer.**

The assessment appealed against was in respect of the property in the parish of Rumney. No other part of the undertaking was assessed to Schedule A.

The Sewerage Board contended that their interests were " easements " only.

If all the superficial area occupied by the carrier were on the surface it would be one and a-half acres.

The sewer runs over agricultural land, which is not interfered with by the carrier even in the case of the embankment, which varies from 18 in. to 6 ft., and is overgrown with grass.

The value of the adjoining land is £2 per acre per annum, and this sewer is assessed to the relief of the poor at £700 net.

The appellants contended that it fell under No. 3, Rule 3, and was assessable upon the whole concern (Rule 3, Sch. A) in accordance with the rules of Sch. D (1866, sec. 8), and at Pontypridd (1842, sec. 60, No. 4, Rule 1); that they were neither owners nor occupiers, the land being already assessed on other persons. Further, that if assessable at all it should be on one and a-half acres at £2.

The Surveyor contended—

That it was a " hereditament " (No. 1, Sch. A)—not only an " easement "—and was capable of actual occupation. That

a poor rate case against the Sewerage Board had decided that it was a rateable hereditament. That they were not a trading concern (No. 3, Sch. A). He referred to the *Edinburgh Southern Cemetery* case (*post*), where Lord Maclaren had said that an unnamed business carried on by the use of land would not come under Rule 3, if it were possible to put it under Rule 1 or 2.

Schedule A.
Ystrady-
fedwg, &c.
Sewerage
Board v.
Beasted.
Sewer.

He further argued that "levels" were such as Bedford Level. That the annual value did not depend on use, and this case was thus distinct from that of a concern under No. 3, Sch. A.

It was held that the sewer was a hereditament capable of actual occupation, and was occupied by the Sewerage Board, and that they were chargeable with income tax on the annual value thereof under sec. 60, Sch. A, Rule 1.

In *Turner v. Carlton* the facts were that "The Ealing Theatre and Lyric Hall and Restaurant" were held on a lease for three years, at £525 for the first half-year, and £1,600 per annum for the remainder of the term (an average of £1,509). The lease recited that the rent included £210 for rent of certain furniture. The lessors paid a fire insurance premium of £429 per annum (£397 10s. od. on the fabric and £31 10s. od. on the furniture).

Turner v.
Carlton.
Deduction of
Insurance
Premium.

Schedule A.

*Turner v.
Carlton.*Deduction of
Insurance
Premium.

The lessee contended that the assessment should be :—

	£	s	d	£	s	d
Amount as above				1,509	0	0
<i>Less</i> other premises in lease as						
above (agreed)	130	0	0			
Rent of furniture (agreed)	210	0	0			
Insurance	397	10	0			
				737	10	0
Net				771	10	0
Add for internal repairs				116	0	0
				£887	10	0

The Surveyor objected to the item of £397 10s. od.

Channell, J., decided against the company (K.B.D., 10th February 1909), on a technical point on the Quinquennial Valuation List, viz., that the value was to be “taken” as the annual value in the previous year—and this was conclusive and did not mean “*provisionally* taken,” and it was therefore not necessary to decide as to the insurance. He stated, however, that he had been brought to the opinion that the amount should not be allowed, but had it been necessary for the decision of the case to decide it, he would have taken a little further time to consider the case and go into it more in detail.

By an Act of 1788 the predecessors of the Conservators of the River Thames were exempted in respect of certain property from Parliamentary taxes (the income tax not having been then imposed), and under a consolidating Act of 1894 the Conservators were exempted in respect of the same property from all Parliamentary rates, taxes, assessments, and payments whatsoever. It was held in *Stewart v. Conservators of the River Thames* (K.B.D., 11th and 12th February 1908) that the exemption included income tax.

Schedule A.
Stewart v.
Conservators
of River
Thames.
Exemption
from all
taxes.

By the Act of 1860 it is provided that railways are to be assessed by the Commissioners for Special Purposes, and that they shall also assess the duties payable under Schedule E in respect of all offices and employments of profit held in or under any railway company, and an assessment shall be made on the company in respect of them. The company are also empowered to deduct the duty on payment of the salaries.

Railways to
be assessed
by special
Commis-
sioners.

By the Act of 1866 (29 & 30 Vic. cap. 36), sec. 8, all these concerns described in sec. 60, No. III. (1842), viz., quarries, mines, ironworks, &c., are to be assessed according to the rules prescribed under Schedule D, so far as such rules are consistent with No. III., and they are therefore dealt with under that head in this work, both as to assessments and appeals. (Chapter VI.).

Mines,
quarries, &c.
to be assessed
according to
rules under
Schedule D.

In “Dowell’s Income Tax Laws,” 5th Ed., it was stated :—

Schedule A.**Effect of Act
of 1896.****Knowles v.
McAdam.****Coltress Iron
Co. v. Black.**

"In *Knowles v. McAdam* it was held that the effect of this section is to transfer the concerns described in No. III from Schedule A to Schedule D. This decision has since been overruled in *Coltress Iron Company v. Black*, where Lord Blackburn observed :—

'If the effect of sec. 8 was to transfer cases in Schedule A, No. III, to Schedule D, it would change the respective times on an average for which the profits were to be assessed. Mines would be reduced from a five-year period to a three-year period. Quarries and things of that sort would be raised from a single year to three. I cannot think this was either intended or expressed. But on the assumption that it had this effect, the Exchequer Division came, in *Knowles v. McAdam*, to a very startling decision.'

"As a fact," "Dowell" continues, "the section was introduced at the instance of the mine owners, to enable them, if they desired, to return their profits for assessment in one sum by the Special Commissioners instead of returning them for assessment by the Local Commissioners. There was no intention to alter the incidence of the tax or the average (of years) on which returns were required to be made by mine owners. See Twenty-fourth Report, Inland Revenue, p. 78."

**Business, &c.
commenced
within period
prescribed.**

If the accounts required by Rule II., Sch. A, cannot be made out in consequence of the possession or interest having commenced within the periods prescribed, viz., within three years, one year, or seven years (No. II., p. 13), within the one year in the case of quarries, &c., and ironworks, &c., or within the five years in the case of coal mines, &c. (No. III., p. 15 *et seq.*), the profits are to be estimated in proportion to the profits received since the commencement of such possession or interest. (1842, sec. 60, Schedule A, No. IV., Rule 6.)

In the case of dwelling-houses of a less annual value than £10, and of lands (which term includes buildings) let for a less period than one year, the assessment under Schedule A is to be made on the landlord (sec. 60, No. IV., Rule 3). In other cases the assessment was, until the Finance Act 1898 (below), always on the occupier (sec. 63, No. IX., Rule 1), but he was (and is) entitled to deduct the tax from his landlord when he makes the next payment of rent (No. IV., Rule 9) on production of the collector's receipt (*Pocock v. Eustace*, 2 Camp., 181, 1809). The Finance Act 1898, sec. 10, provides that the Commissioners, on a request in writing from the landlord (which, however, is revocable) on or before the 31st July in any year, may from year to year charge him instead of the occupier, but there is still the usual remedy against the occupier in case of default in payment by the landlord. If, in such a case, the occupier still has to pay the tax he may deduct it from "the next or any subsequent payment of rent." (1898, sec. 10.)

Schedule A.
How the
duties are
charged.
Landlord and
occupier.

By the Act of 1853, sec. 40, it was provided that the occupier should only be entitled to deduct tax *on the rent*; and if he is assessed at more than this it is for him to see that the assessment is reduced, otherwise he must himself bear the difference between the amount he pays and the tax on such amount. The assessment for income tax being usually based on the poor rate valuation where that assessment is the full annual value (1842, sec. 64), his first step will be to get that reduced. As a rule there will not be any difficulty in this; where, however, he has paid a premium

If occupier
charged, he
may deduct
duty on pay-
ment of rent.

Obtaining
reduction of
assessment.

Generally
occupier
must appeal.

Schedule A.

for a lease of premises they will be assessed at the *annual value*, not at the *rent*, and in this case he will not be able to get the assessment reduced to the rent. If he is a trader carrying on business in such premises, he will be recouped by charging the *annual value* (in lieu of rent) against his trading for income tax purposes ; but, if the lease for which he has paid a premium is in respect of a dwelling-house, he has not any means of recouping himself the tax on the difference between the rent paid and the annual value.

Deduction of
tax on
payment of
rent by tenant.

Prior to 1894 there was not any difficulty as between landlord and tenant as to the amount of tax which the latter (having paid) could deduct from his landlord on payment of his rent. It was clearly either an amount equal to tax on the rent or the amount actually paid, whichever was the lesser of the two.

Since the Act of 1894 some doubt has arisen as to whether the position is not different now.

In ordinary cases the position is simple. Premises of the annual value of £60 let from year to year for that sum are assessed at £50 (£60 less one-sixth), tax on which is paid by the occupier, and he is entitled to deduct the same on payment of his rent—the landlord thus bearing tax on £50 in respect of his *gross* income of £60, the balance of £10 being the statutory amount allowed for repairs.

In many cases, however, the rent does not correspond with the annual value, and premises of the annual value of £60 may be let at (say) £50 for various reasons, *e.g.* :—

Schedule A.
Deduction of
tax on
payment of
rent by tenant.

(1) Where the tenant has undertaken to bear the landlord's repairs, or holds the premises under a repairing lease, as in London.

(2) Where the tenant has paid a premium for a lease.

In the first case the position is clear. The assessment is £50 net (1894, sec. 35 (b) (2)), the tenant deducts tax on the full £50 on payment of rent to the landlord (1853, sec. 40), and he has the allowance of £10 annual value as against repairs. The landlord bears tax on £50, his absolute income from the property. If the gross annual value were £57, only £7 could be deducted for repairs (1894, sec. 35 (b) (2)); if the gross annual value be £72 the net would be £60. In both these cases the tenant would deduct tax on £50 from his rent.

The second case presents a slight difficulty. The assessment is £60 gross, £50 net, and the rent is £50. Previous to 1894 (when the assessment was £60) it is clear that, though the landlord had to bear repairs, he had to suffer deduction of tax on the whole £50 (1853, sec. 40) just as he would have had to suffer then on the whole £60 in an ordinary case. On the other hand, the tenant had no means of recouping himself for the whole tax, his right of deduction being limited as above to tax on £50; and this is still so.

Schedule A.
Deduction of
tax on
payment of
rent by tenant.

It is clear that the intention of the Act of 1894 was to give relief to landlords who had previously to pay tax on their gross income. We would submit that the effect of sec. 60, No. IV., 9th Rule, providing that—

“the occupier . . . paying the said duties . . . shall deduct so much thereof in respect of the rent payable to the landlord for the time being (*all sums allowed by the Commissioners being first deducted*) as a rate of (1s.) for every 20s. thereof, would by a just proportion amount unto. . . .”

is to entitle the landlord to demand that the tenant shall allow “all sums allowed by the Commissioners” before deducting tax, and that in the case in question the amount of tax which the tenant is entitled to deduct is on £40—viz., £50 rent, less £10 “allowed by the Commissioners.”

As mentioned above, a *trader* may recoup himself by setting off the difference against his profits assessable under Schedule D.

To take an exaggerated case, we submit that where the gross annual value is £60 (net £50), and the tenant has paid such a premium that the rent is only £10, the landlord is entitled to ask that he shall have his rent in full, the £10 “allowed” being deducted off the £10 of rent, thus not leaving anything from which the tenant may deduct tax.

By sec. 160 of the Act of 1842 the matter is one for settlement by the Commissioners.

The above view is supported by officials of experience, and we submit that the intimation on the demand note that—

The landlord is bound, under a penalty of £50, to allow out of the *next* payment of rent after the date of the collector's receipt the amount of duty paid under Schedule A up to an amount not exceeding 1s. 2d. in the £ on the rent payable for the year,

Schedule A.
Deduction of
tax on
payment of
rent by tenant.

can only be read as applying to *ordinary* cases, and must not be considered to be applicable universally.

It should, however, be mentioned, that in a case submitted to the Board in 1905 they expressed the view that the right to deduct tax up to the amount of rent paid "was not in any way interfered with by the Act of 1894" (sec. 35), though they admitted that in such a case where the gross Schedule A assessment is in excess of the rent "some portion of the relief granted by the section mentioned accrues to the tenant."

In *W. Hancock & Co., Lim. v. Gillard* (King's Bench Division, 26th October 1906) a tenant of a tied house let at £100 per annum had paid £20 to the Compensation Fund, and of this amount £14 was the sum which he was entitled to deduct on payment of his rent (under sec. 3, subsec. (3), of the Licensing Act 1904). The premises were assessed at £29 14s. 0d. The landlords claimed that he could only deduct tax on £86 when paying his rent to them, and sued him for 14s.

Hancock v.
Gillard.
Licensing Act
1904.

Bigham, J., held that he was entitled to deduct on the full £100.

Schedule A.***Walker v.
Brisley.*****Poor Rate
valuation not
binding.**

It must be understood, however, that the poor rate valuation is not binding for income tax purposes (*Walker v. Brisley*, Queen's Bench Division, 26th June 1900). If the valuation is made throughout on the full annual value, then the Commissioners usually adopt the poor rate figures, and will not reduce an assessment till the poor rate valuation is reduced; but in many cases, especially in the country, the valuation is not on the full annual value, and there is also great inequality in the rating of different properties.

In re Menzies.

In the case of *In re Menzies* (Court of Exchequer, Scotland, 23rd August 1877) it was held that where the Surveyor of Taxes is not appointed assessor under the Lands Valuation (Scotland) Acts, the valuation under those Acts is not binding for the purposes of the Income Tax Acts.

A like decision was given in *Stocks v. Sulley* (Court of Session, Scotland, 27th and 28th June 1899).

***Rex v.
Commissioners of
Offlow.*****Expert
evidence.**

In Rex v. General Income Tax Commissioners for Offlow the Commissioners refused to hear an expert valuer whose evidence the owner of an inn sought to put forward on an appeal under Schedule A, and the owner applied for a mandamus. The Court discharged the rule (K.B.D. 23rd March 1911), holding that, as the Commissioners had been told the nature of the evidence and had come to the conclusion that it would be of no assistance to them, it was not such a "refusal to hear the case" as would justify a mandamus.

By the Act of 1842, the assessment being upon the occupier, it was he who had to appeal if the assessment was

considered excessive, but, by the Finance Act 1896, sec. 28, it is provided that any owner, &c., although not the occupier, shall have the same right of appeal as if the assessment were made upon him.

Schedule A
Since 1896
owner may
appeal.

It will thus be seen that the tax falls on the owner, and any contract for payment of rent or any other annual sum in full and without deduction is absolutely void (1842, sec. 103).^{*} The tax is, however, a charge on the property, and ultimately falls on the landlord. It is only as a matter of convenience that the assessment is usually made on the tenant. In the case of dwelling-houses, it is included on the same demand note as Inhabited House Duty. In the case of warehouses and shops, where, of course, there is not any Inhabited House Duty payable, the tax is in some districts collected from the landlord.

Tax collected
from landlord
for ware-
houses.

^{*}Very specific language is required to render an annuity, &c., under a will or settlement payable in full without deduction of tax. Speaking generally, a direction to pay "free of all deductions" would not make it payable in full. It was held in *Lund v. President, &c., of the Liverpool School for the Blind* (Ch.D. 1st July 1898), that the chaplain of the school, which was incorporated by a private Act of Parliament of 1829, was not entitled to have his salary in full, though the Act provided for the payment of it "without any deduction or abatement for taxes howsoever." See also *Attorney-General v. Ashton Gas Co. (post.)*

Similarly in *Shrewsbury v. Shrewsbury* (King's Bench Division, 29th May 1906) it was held that £4,000 a year "clear of all deductions" did not entitle the recipient to receive the amount without deduction of income-tax.

Schedule A.***Reading v. Chew.*****Distress for Arrears.**

In *Reading v. Chew* (Queen's Bench Division, 14th and 15th June 1898) it was held that a distraint on the goods of the occupier for the time being for income tax (Schedule A) for the previous year when the premises were unoccupied was lawful under sec. 70 of the Act of 1842, and that sec. 35 of the Act of 1853 only qualifies the right of distress where the duty ought to have been paid and borne by a former occupier.

Probably in this case there may have been some difficulty, such as that the Commissioners had not been furnished with proof of the premises being unoccupied, for, by sec. 70, duties are not to be levied on any house in respect of a period during which it is *proved* to have been unoccupied.

Omission of tenant to deduct tax paid on payment of rent.***Cumming v. Bedborough.******Denby v. Moore.******Andrew v. Hancock.***

Until 1898 where a tenant had paid property tax and omitted to deduct it from his *next* payment of rent, he could not afterwards recover the amount as money paid to the use of the landlord (*Cumming v Bedborough*, decided in 1846; see also *Denby v. Moore*, decided in 1817; and *Andrew v. Hancock*, decided in 1819). Now, however, in certain cases, he can deduct it from any subsequent payment (see p. 32).

Lamb v. Brewster.

The case of *Denby v. Moore* was relied on in *Lamb v. Brewster and another* (Queen's Bench Division, 25th February 1879), where Mr. Lamb sued the executors of his late landlord for income tax (Schedule A) paid by him for several past years. It appeared that he had made application for the amount after each payment, and the landlord had agreed with him that if he would continue to pay the rent in

full, he (the landlord) would refund him what he had paid in past years, or should pay in the future. The Court gave judgment for Mr. Lamb, distinguishing the case of *Denby v. Moore*, on the ground that in that case the tenant had not made application to his landlord for the tax. They further held that sec. 103 of the Act of 1842 (rendering void all contracts for the payment of rent, &c., in full) did not apply, as the effect of the present agreement was, not to throw the burden of the tax on the tenant, but rather to create a contract of loan between the tenant and the landlord. This decision was subsequently confirmed by the Court of Appeal.

Schedule A.
Lamb v.
Brewster.

We understand that in the case of *Thomson v. Adcock*, heard in the Liverpool County Court, 3rd February 1893, where the tenant had deducted two years' tax from his rent and was sued for it by the landlord, judgment was given in favour of the tenant.

Thomson v.
Adcock.

The case is not fully reported, but there must have been some special circumstances to have led to the decision.

Further, it was held in the Court of Session, Scotland, 3rd June 1903, in *Agnew v. Ferguson*, that the plaintiff, who had paid certain royalties to the defendant without deduction of tax, was entitled to recover the amount of the tax by action. The defence was that the Act of 1853 only gave the right to deduct on payment, and not a right to recover after payment.

Agnew v.
Ferguson.

The Court held that, as the statute said that a person was entitled to deduct or retain the amount, it conferred the

Schedule A.
Agnew v.
Ferguson.

privilege of reimbursement, the statute giving, in short, the tenant a lien over the royalties for payment of the duty and entitling him to repayment of money paid to the landlord, which the landlord had no title, moral or legal, to retain.

As to deduction of tax on payment of arrears of annuity, see *post*.

Tenant may sometimes deduct from any subsequent payment of rent.

Now, however, by sec. 10 of the Act of 1898, if the landlord has elected to be assessed himself and the tenant has been compelled to pay the tax, he may deduct it from "the next or any subsequent payment on account of rent" (*ante*, p. 23 *et seq.*).

Deductions.

Deduction from the gross annual value is allowed for the purpose of assessment under Schedule A, in respect of tithes returned for income tax purposes by the tithe owner, and for land tax paid by the owner. Since 5th April 1894 deduction is also allowed in respect of repairs, but only to the extent before mentioned (pp. 10 and 11).

Stevens v.
Bishop.

Expenses of collection of tithe allowed.

In the case of *Stevens v. Bishop*, heard in the Court of Appeal (15th February 1888), it was held that a clergyman, being assessed to income tax in respect of tithe commutation rent charge, was entitled to a deduction for the actual expense of collection. It was so held on the ground that the annual value was, by the Acts, to be the rent at which the tithe rent charge would let, and it was said that any tenant would have to incur such expense.

In *Hesketh v. Bray* it was held by the Court of Appeal (7th August 1888) that the allowance under Schedule A for repairing sea-walls or other embankments “ necessary for the “ preservation or protection of such lands against the “ encroachment or overflowing of the sea or any tidal river ” (1853, sec. 37), does not apply to embankments made for the improvement of the land by altering its condition, but only to embankments made for its protection or preservation in its existing state.

**Schedule A.
Deductions.**

Hesketh v. Bray.

**Cost of
embankment
for improve-
ment of land
disallowed.**

In *McGregor v. Macfarlan* (Court of Session, Scotland, 9th February 1889) Mr. McGregor appealed against an assessment upon him under Schedule A on the ground of having been called upon to pay, and having paid, to his Grace the Duke of Argyll, as superior of the lands, a casualty of superiority amounting to a full year’s rental of the lands. He had had to pay the casualty in full without deduction of tax, and, moreover, his Grace was required by the Commissioners to make a special return of, and to pay income tax direct upon, all casualties received by him. He contended that this was a double assessment, and should be vacated in the manner provided by the Taxes Management Act 1880, sec. 60.

McGregor v. Macfarlan.

**Casualty of
superiority
disallowed.**

In support of the assessment it was maintained that the payment was one of capital.

The Court gave judgment for the Crown. They said the appellant’s view was founded on the idea that a composition paid to a superior for his entry made the superior the proprietor in right of the rents for the year in which the entry

**Schedule A.
Deductions.**

was obtained. This was a fallacious view. The composition was exigible, not as a rent, but as the price for entry, and it was a mere accident that in some cases that price was measured by a year's rent.

**Duke of
Norfolk v.
Lamarque.**

**Expenses of
collecting
manorial
rates
disallowed.**

The decision in *Stevens v. Bishop* was relied on by the appellant in the case of *The Duke of Norfolk v. Lamarque*, where he claimed to be entitled to deduct from the amount of the manorial rights due to him the expense of collecting the same. Baron Pollock, in giving judgment for the Crown in the Queen's Bench Division, 20th January 1890, said there was a marked distinction between the two cases. In *Stevens v. Bishop* it was admitted that the sum there claimed to be deducted was necessarily expended; but there was not any such admission in this case.

**Schedule B.
General rules
for
assessment.**

The tax under Schedule B is levied on agricultural lands, hop gardens, &c. (1853, secs. 2 and 39). The estimate of profit is based on the rent or annual value, and (subject to the right to elect to be assessed under Schedule D as mentioned below) the occupier pays tax for the current year 1911-12 at 1s. 2d. in the £ on one-third thereof, subject to the right to relief to "earned" incomes (*post*).

**In re
Middleton.**

**Schedule A
assessment
is basis for
Schedule B.**

In the case of *In re Middleton* (Court of Exchequer, Scotland, 16th March 1876) it was held that the basis of assessment for Schedule B was to be the value charged under Schedule A. The case arose in connection with the occupation of a deer forest, which the appellant had claimed was not "capable of actual occupation" (Rule 7), and that though

it was assessed at a considerable sum under Schedule A, it should not be charged under Schedule B beyond the ordinary grazing value of the land. **Schedule B.**

The tax under Schedule B, unlike that under Schedule A, is borne by the occupier. It is, in fact, analogous to that under Schedule D, and is in respect of the occupier's estimated profits arising from his farming business. **Tax to be borne by occupier.**

The profits arising from lands occupied as nurseries or gardens for the sale of produce are to be estimated according to the rules contained in Schedule D (1842, sec. 63, Schedule B, No. VIII.). **Nurseries, &c., to be assessed under Schedule D.**

In *Revell v. Scott* (Court of Session, Scotland, 26th June 1895) Mr. Scott, who is a tenant of the same farm under two leases—one of the farm as a sheep farm, and the other of the landlord's shooting rights over it—sought to establish that he was not liable to assessment under Schedule B in respect of the latter. The Court held, however, that he was clearly liable. **Revell v. Scott.**
Farm assessable under Schedule B, both in respect of value as a farm and for shooting rights.

By the Act of 1887, any farmer may, before assessment, elect to be assessed under Schedule D, instead of Schedule B. The election is to be signified by notice in writing to the surveyor, delivered within two months after the commencement of the year of assessment. If the notice is sent by post the letter must be registered. **Farmer may elect to be assessed under Schedule D.**

The notice is to be given annually within the stipulated time, and in the absence of such notice the assessment will

Schedule B.

be made under Schedule B in the ordinary course. In introducing his Budget in the House of Commons, 26th March 1888, the Chancellor of the Exchequer stated that, during the year 1887-8, 160 farmers availed themselves of the Act, the result being that they paid tax on £2,500 instead of on £22,000.

**Finance Act
1896.****Relief to
farmers.**

By the Finance Act 1896, sec. 27, it is provided that, for the purposes of any claim to exemption, &c., the income chargeable under Schedule B shall be taken to be one-third of the annual value thereof under Schedule A; except that, if it be shown at the end of any year that the profits and gains fell short of that amount, the income shall be taken to be the actual amount of such profits and gains, and the tax on any difference shall be repaid. No objection is taken to such appeals if notice be given within twelve months following the year to which such appeal relates.

This Act repeals the former provisions contained in the Acts of 1851 and 1880.

**Schedules
A and B.****Assessment
where tenant's
rates paid by
landlord, &c.**

Where the tenant's rates or taxes are paid by the landlord, the annual value, for the purpose of Schedules A and B, is to be estimated after deduction of such rates, &c., and, conversely, where the landlord's taxes are paid by the tenant, the amount is to be added to the rent (1842, sec. 63, Schedules A and B, No. X., Rules 1 and 2). Information on this point is furnished to the Revenue by the tenant in the return which he has to make every five years.

Where the assessor is not satisfied with the return made, or if there has not been any return made, he is himself to estimate the annual value of the property and make an assessment, according to the *full* annual value (1842, sec. 64; see also *ante*, p. 23).

Schedules A and B.
Where return not made, assessor to estimate annual value.

Due allowance is to be made, if claimed, in respect of buildings unoccupied for the year or any part thereof (1842, sec. 70).

The original assessments in 1842 were based on the poor rate assessment (1842, sec. 64), see, however, p. 23, and the overseers of the poor are to produce the Rate Books to the Commissioners when required (1842, sec. 75; 1880, sec. 39).

Poor rate assessment to be basis.

So soon as the assessments are allowed, the Commissioners are to cause notice to be given in such manner as they shall judge expedient.

Notices to be given of assessments.

Any person aggrieved may appeal to the Commissioners against the assessment (1842, sec. 80).

Where, by reason of flood or tempest, loss shall be sustained to crops, or any lands shall be rendered incapable of cultivation, the Commissioners, on proof that the owner has abated any portion of the rent, may abate the assessment under Schedules A and B to a like extent. Similar relief is granted where the owner is himself the occupier (1842, secs. 83, 84, and 85).

Abatement by reason of loss by flood, &c.

**Schedules
A and B.**

Although the assessments under Schedule A are only revised as a whole every five years, adjustment will be made in respect of increased rents due to structural alterations, or reduced rents, during the last four years.

**Claims for
repayment.**

Claims for repayment under Schedules A and B are dealt with in Chapter VIII. (Exemptions and Abatements).

Appeals.

Appeals against assessments under Schedules A and B are to be heard by the General Commissioners (1842, sec. 80), except in the case of quarries, mines, ironworks, &c., in which cases the appeal may be either to the Special Commissioners or to the General Commissioners (Act of 1860, 23 & 24 Vic. cap. 14, sec. 7).

**Bruce v.
Burton.**

In connection with Schedule B, see the case of *Bruce v. Burton* (*post*).

**Houses of
Wesleyan
Ministers.**

We understand that since 1902 the furnished houses provided for Wesleyan ministers are not assessed to Schedule A (except as to interest, &c.), if the stipend of the minister does not exceed £160. A circular issued from Somerset House gives authority for the—

“Schedule A assessment to be discharged in those cases where a dwelling-house belonging to the trustees of a Nonconformist religious body, or of a public elementary school, is occupied rent free, and without power of letting, by a minister or teacher whose total income, exclusive of the annual value of the house, does not exceed £160 per annum.”

CHAPTER IV.

SCHEDULE C.

THE tax under this Schedule is levied on all profits arising from interest, annuities, dividends, and shares of annuities payable out of any public revenue (1853, sec. 2).

Tax levied on interest payable out of public revenue.

The Governor and Directors of the Company of the Bank of England are Commissioners for the purpose of charging the duties on their own profits, and in respect of all annuities, dividends, &c., payable out of the revenue of the United Kingdom, and of all other dividends, &c., entrusted to them for payment, and of all pensions and salaries payable by them (1842, sec. 24).

Commissioners for charging duties under Schedule C.

The Commissioners for the Reduction of the National Debt are Commissioners for the purpose of charging the duties on the annuities and pensions paid by them (1842, sec. 28).

Such respective Commissioners are required to keep an account of the dividends, annuities, &c., and from time to time to make an assessment of the duty chargeable thereon, and to deliver the books of assessment to the Commissioners for Special Purposes, who are to make an assessment upon them accordingly (1842, sec. 89).

Schedule C.

Tax to be deducted on payment of interest, &c.

They are then required to retain the tax before payment of the dividend, &c., and from time to time to pay the same into the account of the Accountant and Comptroller-General of Inland Revenue with the Bank of England (1842, secs. 93 and 94).

Tax on Dividends, &c. out of revenue of colony.

Similarly, persons entrusted with the payment of dividends, &c., payable out of the public revenue of any colony or settlement belonging to the United Kingdom are to retain the tax, and to pay it to the same account (1842, sec. 96; Act of 1885, 48 & 49 Vic. cap. 51, sec. 26).

Tax on National Debt certificate coupons.

The National Debt Act 1870 (33 & 34 Vic. cap 71, sec. 36) makes similar provisions as to tax on coupons attached to National Debt certificates.

Tax on interest from foreign state.

The tax on interest and annuities payable out of the revenue of foreign States which are entrusted for payment to anyone resident in the United Kingdom is, by the Income Tax Act 1842 (sec. 29), and a subsequent Act of the same year (5 & 6 Vic. cap 80), chargeable under this schedule.

Interest and dividends from foreign, Indian and colonial companies to be charged under Schedule D.

In 1853 these provisions were extended to include the duties on all interest, &c., payable in respect of the stocks, funds, or shares of any foreign company when so entrusted for payment, which interest, &c., was made chargeable under Schedule D (1853, sec. 10).

By an Act of 1861 (24 & 25 Vic. cap. 91) the provisions were further extended to include colonial companies, and by the Act of 1866 (as to which see also p. 21) to include cases

where the title of the person to whom the sums may be payable is shown by the registration of his name in any book or list ordinarily kept in the United Kingdom, and by the Revenue Act 1868 (31 & 32 Vic. cap. 28) to annuities, &c., payable out of the funds of any institution in India.

Schedule C.

In reply to an inquiry in the House of Commons in December 1906 as to the justification for refusing to refund income tax to British subjects resident abroad upon interest of colonial and foreign government securities, on the ground that these are assessed under Schedule C and not under Schedule D, as are dividends of other foreign securities, Mr. Asquith stated that under Schedule D liability in respect of income arising out of the United Kingdom was only incurred by residents within the United Kingdom, and therefore the interest on foreign and colonial securities chargeable under that schedule was not liable to duty when received by any person resident outside the United Kingdom, although the payment may be actually made within the United Kingdom. Under Schedule C income tax was chargeable in respect of all colonial and foreign Government securities the interest of which was payable in the United Kingdom. By Administrative Treasury concessions of very long standing, exceptions from the charge under Schedule C were made in favour of : (a) Foreign Government and colonial securities owned by foreigners resident abroad ; (b) colonial Government stock owned by inhabitants of the colony contracting the loan. Section 188 of the Act of 1842 had no application to the point raised by the question.

British subjects abroad not exempt in respect of colonial interest paid here.

Schedule C.

Section 188 is as follows :—

British subjects abroad not exempt in respect of colonial interest paid here.

“Every provision in this Act contained, and applied to the duties in any particular schedule, which shall also be applicable to the duties in any other schedule, and not repugnant to the provisions for charging, ascertaining, or levying the duties in such other schedule, shall, in charging, ascertaining, and levying the same, be applied as fully and effectually as if the application thereof had been so expressly and particularly directed: anything herein contained to the contrary notwithstanding.”

The concession referred to is that interest and dividends arising from foreign and colonial Government securities payable through agents in the United Kingdom are exempted from income tax where the owners of the securities are foreigners and reside out of the United Kingdom, unless they live in the colony contracting the loan. But this concession has not been extended to British subjects, and hence those to whom the concession has not been granted are required to include all such dividends and interest in any statement of income rendered by them for the purposes of a claim to exemption or abatement.

Now see also sec. 71 of the 1910 Act.

Exchequer Bills.

The interest on Exchequer bills, &c., is likewise chargeable under Schedule C, and any person purchasing any such security with current interest thereon is entitled to deduct the proportion of tax thereon (1842, sec. 97).

Rate of deduction.

As to the rate at which tax should be deducted, see Chapter VII.

Exemptions.

As to claims for exemption, &c., see Chapter VIII.

SCHEDULE D.

As this work is intended to deal mainly with this schedule, it may be convenient now to take Schedule E, and then to proceed in detail with Schedule D. **Schedule D considered later.**

CHAPTER V.

SCHEDULE E.

Tax levied on salaries, &c., of public offices.

THE tax under this schedule is charged in respect of every public office or employment of profit, and upon every annuity, pension, or stipend, payable by His Majesty or out of the public revenue of the United Kingdom, except annuities charged under Schedule C (1853, sec. 2). The schedule includes the salaries of Government officials and directors, managers, &c., of public companies, auditors' fees, &c. In the case of the salaries of Government officials and of other salaries payable at Government offices, the tax is paid by way of deduction (1842, sec. 146, Rules 5 & 6). In other cases the assessment is usually made upon the person holding the office (1842, sec. 146, Rule 1), and he pays the tax on demand, as in the case of a salary chargeable under Schedule D.

In the case of public companies it used to be customary to assess in one sum the remuneration voted to directors, and, the tax being paid by the company, to deduct it from the payment to the directors, but, since the question of relief to "earned" incomes (Chapter VIII.. Part III.) will invariably arise now, each one is usually charged separately.

In some cases the remuneration is paid to the directors in full, without deduction of tax. This is irregular, and not justified by the *usual* resolution of shareholders; if it is desired to have the payment made in full, the resolution should be worded accordingly.

Schedule E.
Directors' remuneration should not be paid without deduction of tax.

Where the person to be charged is necessarily obliged to incur expense, such as travelling or keeping and maintaining a horse, to enable him to perform his duties, the amount of such expense is allowed as a deduction (1853, sec. 51), but not the expenses of travelling to his business.

Travelling Expenses.

The amount of the assessment is to be the salary, &c., for the year current (1842, sec. 146); and any person assessable under Schedule E who shall, at any time during the year of assessment, become entitled to any additional salary or fees, is to be charged by additional or supplemental assessment (1853, sec. 53).

Assessment to be on salary of year.

It is provided by sec. 21 of the Finance Act 1907 that :—

(1) Every employer, when required to do so by notice from an assessor, shall, within the time limited by the notice, prepare and deliver to the assessor a return of the names and places of residence of any persons employed by him, to whom this provision applies, and of the payments made to those persons in respect of that employment, and section fifty-five* of the Income Tax Act 1842 shall apply with respect to any such return as it applies with respect to the lists, declarations, or statements mentioned in that section.

Employer to return salaries of servants.

*The penalty section. (See *post*.)

**Schedule E.
Employer to
return
salaries of
servants.**

This provision applies to all persons employed by an employer, except persons who are not employed in any other employment, and whose remuneration in the employment for the year does not exceed the sum for the time being fixed as the limit for total exemption from income tax.

(2) Where the employer is a body of persons, corporate or unincorporate (including a company), the secretary of the body, or other officer (by whatever name called) performing the duties of secretary, shall be deemed to be the employer for the purposes of this provision, and any director of a company, or person engaged in the management of a company, shall be deemed to be a person employed.

It will be observed that the proviso is designed to cover all persons who can possibly be liable, as the name is to be included if the person is in any other employment, notwithstanding that he does not receive £160 in the employment in question.

**Memorial by
civil
servants.**

In 1897 a memorial was addressed to the Chancellor of the Exchequer by certain civil servants, asking that legislation should be proposed with a view to secure that their salaries should be assessed under Schedule D instead of under Schedule E, thus giving them the benefit of the average. The Chancellor, however, signified his inability to comply with the memorial, pointing out that the principle of average under Schedule D was specially devised to meet the cases of profits and earnings necessarily of a more uncertain and precarious character than incomes derived from fixed and regular salaries. With respect to salaries of civil servants, he said :

“Those salaries, in the great majority of cases, rise by regular increments; where they do not so rise, they are stationary. The system of averaging, therefore, would either be inoperative, or would inevitably work against the Revenue by enabling the civil servant to pay income tax on something less than his annual income. This would be equivalent to a special system of abatement for official incomes.”

**Schedule E.
Reply of
Chancellor of
Exchequer.**

The argument of the Chancellor, which was urged as to the average under Schedule D, is easily answered. For instance, in the case of an individual or firm in trade, the salaries and commissions of managers and others are all assessed under Schedule D. When such a business is formed into a limited company, the salaries of the secretary and others and commission to managers are chargeable under Schedule E. If there be any excuse for transferring salaries to Schedule E the same does not appear to be applicable to fluctuating commissions to managers. Indeed, the argument is rather in favour of continuing the assessment as before under Schedule D; the mere *nominal* change in a business not appearing to be sufficient to justify the transfer to Schedule E, and, further, a distinction is made even in such a transfer in assessing subordinates on the average (see below) and only the higher officials on the income of the year.

**View of
Chancellor
discussed.**

Complaints are made that there is much inconvenience and trouble caused by widening the scope of Schedule E beyond what is thought to have been the intention of the Act of 1842, seeing that the present Limited Liability Act relating to general businesses was only passed twenty years later.

**Widening
scope of
Schedule E
troublesome.**

**Schedule E.
Clerks, &c.
allowed to
average.**

It will be noticed that the fact of the assessment being on the salary of the *year of assessment*, instead of on the average, places persons employed by public companies at a disadvantage as compared with those employed by private firms. We find, however, that it is the practice to allow such persons, other than secretaries, managers, &c., if in a subordinate position, to take a three years' average, as if they were assessable under Schedule D.

In reply to an inquiry in 1906 as to whether managers of departments, secretary, cashier, chief clerks (or heads of departments), or foremen could have the benefit of the average, the Board replied that the foremen were the only persons so eligible.

**Commissions
and bonuses.**

It is also usual (though not universal) to assess commissions and bonuses of fluctuating amount on the average of past years, except in case of beginning of such bonus, &c., when the same is treated as in the case of a new business (*post*).

**Bray v.
Brothers.**

**Claim to set
off past losses
in business
against salary
under
Schedule E
disallowed.**

In *Bray v. Brothers* (Queen's Bench Division, 2nd April 1897) it was held that, where a person who had carried on a business at a loss subsequently converted it into a limited company, being himself appointed managing director, he was assessable on his salary for the year under Schedule E, and could not bring the losses on past years into average with his salary.

It may be noticed that, had an average been permitted, the losses would have been allowed twice, as the company

would pay on past results, the change being a “ succession ” *Schedule E.*
(*post*, Chapter VI., Part II.).

In the case of *The Attorney-General v. The Lancashire and Yorkshire Railway Company* (Court of Exchequer, 1st February 1864), a case had been stated for the opinion of the Court by order of a Judge. The question was whether the company were liable to assessment under Schedule E in respect of their officers, clerks, or servants engaged at weekly wages, as well as in respect of those engaged at annual salaries. The Court held that such wages were assessable under Schedule D, and not under Schedule E, and that Schedule E extended only to offices or employments of a public nature, and not to wages of workmen or artisans, like engine drivers, porters, and labourers.

A.-G. v. L. & Y. Ry. Co.

Salaries of workmen, &c. chargeable under Schedule D.

As already mentioned (p. 21), offices of a public nature held under railway companies are assessed by the Special Commissioners.

Offices under railways assessed by Special Commissioners.

A clergyman may deduct any sum paid by him wholly, exclusively, and necessarily in the performance of his duty (1853, sec. 52). This does not include sums paid to another person to perform part of his duty for him (*Lothian v. Macrae*, Court of Session, Scotland, 13th December 1884). A voluntary contribution by the parishioners is chargeable with duty (*Inland Revenue v. Strong*, Court of Session, Scotland, 14th June 1878). The Rev. Mr. Strong did not appear, and the Lord Ordinary made the following note :—

Clergyman may deduct necessary expenses, but not payments to another to perform his duty.

(*Lothian v. Macrae.*)

I. R. v. Strong.

Contribution by parishioners chargeable.

Schedule E.***I.R. v. Strong.***

“Although this case has been heard *ex parte*, the appellant not having appeared, I have not disposed of it as in absence, but only after carefully considering the argument for the appellant stated in the case. It is with some reluctance that I have formed the opinion that the Commissioners are wrong, and that the appellant is liable for income tax on the £100 mentioned in the case. It is true that it is a voluntary contribution by the parishioners, one which they are under no obligation to make, and which they may withdraw at any time. But still it is a payment made to the appellant as their clergyman, and it is received by the appellant in respect of the discharge of his duties of that office, which is one of public employment in the sense of the statutes. This being so, it follows that the payment must be regarded as either ‘emolument’ under Schedule E, or ‘gain’ under Schedule D, and that it is chargeable with duty.”

Turner v. Cuxson.

**Grant from
Curates
Augmentation
Fund not
assessable.**

An allowance from the Curates Augmentation Fund is not assessable. Such an allowance is given as a donation for faithful service for fifteen years or upwards, and on condition that the party obtains donations to the fund for half the amount of the grant, and it does not accrue to a person by reason of his office (*Turner, Surveyor of Taxes v. Rev. G. A. Cuxson*, decided in the Queen’s Bench Division, 11th December 1888). (See also *Duncan v. Farmer, post.*)

***Hue v. Miller*
case not
argued.**

In *Hue v. Miller* (King’s Bench Division, 29th November 1900) the Crown (on appeal from the decision of the Commissioners) sought to assess the Rev. Mr. Miller in respect of a grant of £15 made to him from the Sustentation Fund of the St. Alban’s Diocesan Poor Benefices Fund as a “perquisite.” On the case coming into Court, the Solicitor-General asked leave to withdraw it, as he had come to the conclusion that he could not, on the facts stated in the case,

argue the points on which it was desired to obtain the opinion of the Court. The appeal of the Crown was therefore dismissed. Schedule E.

In *Charlton v. Corke* (Court of Session, Scotland, 22nd May 1890), a minister of the Church of Scotland was allowed to deduct— *Charlton v. Corke.*

(i.) Expenses incurred in visiting the members of the congregation beyond the limits of his parish ; Deduction of Travelling Expenses allowed.

(ii.) Travelling expenses involved in the discharge of duties laid upon him by his ecclesiastical superiors ;

but his claim for allowance for a room in his manse used as a study, and for books, was refused. Annual value of study disallowed.

Inland Revenue v. Strong was approved, and *Turner v. Cuxson* was distinguished—reversing the decision of the King's Bench Division—in *Herbert v. McQuade* (Court of Appeal, 10th July 1902), where a grant made by the Queen Victoria Clergy Sustentation Fund was held to be assessable. Towards the end of his judgment in the King's Bench Division Phillimore, J., said : *Herbert v. McQuade.*
Grant from Q.V.C. Sustentation Fund is assessable.

“This is an unsavoury case. One cannot help seeing that there has been an attempt to wrest a tax out of this public benevolence. It is pressed against a poor and particularly helpless man, and it is only the fortunate accident that there is a numerous class of men equally poor and helpless which has enabled him to resist what we have found to be an unfounded claim put forward by the officers of the Crown.”

The case first came before the Court of Appeal in November 1901, when the Attorney-General stated that he

Schedule E.

*Herbert v.
McQuade.*Grant from
Q.V.C. Sustain-
ment Fund
is assessable.

considered it his duty to state, in consequence of the above remarks, that the Commissioners of Inland Revenue, deeming the point raised in the case to be one of great and wide-reaching importance, and, at the same time, feeling that the litigation of the point might involve some hardship upon the individual clergyman whose case was taken as a test case, had arranged with him, *before the case was stated*, that the Crown would pay all his costs in any event in all the Courts. The observations of the learned Judge were therefore without foundation.

The case eventually stood over (till July 1902) that the special facts as to the precise form of the application and of the resolution authorising the grant in each year might be brought before the Court. The Master of the Rolls considered this might be a most important factor in determining the case. In giving judgment for the Crown, the Master of the Rolls said the case raised a very nice question of law, as it was very near the line. If it was a *personal* gift it would not be liable to income tax. He pointed out that no inquiry was made as to the *personal* income of an incumbent (the only inquiry was as to the income of the *benefice*); also that, if the benefice fell vacant, the grant was divided. He thought it was therefore very difficult to contend that it was not in terms, and in fact and in result a grant to the *benefice*, and not to the *person*. It came to the incumbent only because he was the incumbent for the time being of an inadequately provided-for parish, therefore it fell, he considered, directly within the words "accruing by reason of such

office," and was assessable. Reviewing *Turner v. Cuxson*, he distinguished it, as in that case it was a *personal* eleemosynary gift—not by virtue of the office of the curate of that particular parish. Dealing with *Re Strong*, he said that though upon the particular facts the decision might be open to discussion—though he did not give any opinion upon that—the *principle* upon which it was decided was right, as the Judge had held that the gift was made by *virtue of the office* of the recipient.

Schedule E.
Herbert v.
McQuade.

In *Turton v. Cooper* (King's Bench Division, 19th and 20th April and 23rd May 1905) a portion of a collection made in church was given by way of "Easter offerings" to an incumbent by reason of his office, but the gift would not have been made if the recipient had not been poorly off. It was held that the offerings were not given as additional remuneration for services, but on account of personal poverty, and that they were not assessable (but see *Cooper v. Blakiston* later).

Turton v.
Cooper.
Easter
offerings not
assessable.

In *Poynting v. Faulkner* it was held by the Court of Appeal (26th, 27th, and 30th May 1905), reversing the decision of the lower Court, that grants made from a Ministers' Stipend Augmentation Fund in augmentation of the stipend of ministers were assessable. In making grants regard was had to the following facts:—

Poynting v.
Faulkner.
Grants from
Stipend
Augmentation
Fund
assessable.

- (a) Ability of a congregation to make adequate provision for their minister.
- (b) The fact that the minister had been regularly educated for a minister.
- (c) The amount of his income.

Schedule E.***Cooper v. Blakiston.*
Easter offerings chargeable.**

In *Cooper v. Blakiston* (House of Lords, 12th and 16th November and 10th December 1908) it was held, affirming the decision of the Court of Appeal, that Easter offerings (consisting partly of collections in church and partly of gifts by parishioners) were assessable.

***Turton v. Cooper*
discussed.**

In the Court of Appeal, Lord Alverstone, C.J., said he doubted whether he would have decided *Turton v. Cooper* in exactly the same way as Channell, J., decided it, "but "still he seemed to have taken it as the basis of his decision "that the money would not have been paid to the incumbent "of the church if he had not been poor. There are findings "in the report (he continued) which, as I have said, would "have made me doubt whether the decision was exactly a "strict application of the principle, because there is a statement that the money was given to the appellant by reason "of his office as incumbent, but, looking at the case, I think "it was a decision upon the particular facts of that case."

Their Lordships were unanimous in affirming the decision. See also *Duncan v. Farmer* (*post*).

***Jardine v. Gillespie.*
Various Allowances.**

In *Jardine v. Gillespie* (Court of Session, Scotland, 6th and 16th November 1906) a minister was allowed to deduct—

- (1) A sum representing part of the cost of keeping a horse and carriage used partly for pleasure and partly in the performance of his duty ;
- (2) Cost of Communion elements ;

but deductions were disallowed in respect of—

- (3) Expenses of Process of augmentation of stipend ;
- (4) Pulpit supply during holidays (following *Lothian v. Macrae*).

Schedule E.

Jardine v. Gillespie.

The Commissioners also allowed—

- (5) Expenses attending meetings of Presbytery and Synod ;
- (6) Stationery (£2).

See also in Schedule D (Clergyman).

In *Beaumont v. Bowers* (Queen's Bench Division, 10th May 1900) the appellant sought to deduct from his salary for the purpose of assessment a compulsory deduction suffered by him under the provisions of the Poor Law Officers' Superannuation Act 1896. He claimed that such deduction fell under the description "duties or other sums payable or chargeable on the same (*i.e.*, the salary) by virtue of any Act of Parliament," and "*bonâ fide* paid and borne by the party to be charged." The Surveyor contended that the payment was not "borne" by him, since it might eventually be returned to him.

Beaumont v. Bowers.

Deduction under Superannuation Act

The Court gave judgment against the Crown, holding that the deduction was clearly allowed in the terms of sec. 146. This was, however, overruled in *Bell v. Gribble* and *Hudson v. Gribble (post)*.

Other cases are those of *Cook v. Knott* and *Revell v. Ellworthy* (Chapter VI., Part II.).

Schedule E.
Appeal.

By sec. 57 of the Taxes Management Act 1880 a general right of appeal is given against any assessment. This includes assessments under Schedule E.

The question of Exemption and Abatements is fully considered in Chapter VIII.

CHAPTER VI.

SCHEDULE D.

PART I.—*Persons and Profits Chargeable.*

BEFORE considering the mode of preparation of accounts Schedule of charge.
for income tax assessment it will be well to go somewhat fully into the question of the persons chargeable, and the description of income liable to duty. The duties under this schedule are deemed to be granted—

“For and in respect of the annual profits or gains arising or accruing to any person residing in the United Kingdom from any kind of property whatever, whether situate in the United Kingdom or elsewhere, and for and in respect of the annual profits or gains arising or accruing to any person residing in the United Kingdom from any profession, trade, employment, or vocation, whether the same shall be respectively carried on in the United Kingdom or elsewhere. . . .

“And for and in respect of the annual profits or gains arising or accruing to any person whatever, whether a subject of His Majesty or not, although not resident within the United Kingdom, from any property whatever in the United Kingdom, or any profession, trade, employment, or vocation, exercised within the United Kingdom. . . .

“And for and in respect of all interest of money, annuities, and other annual profits and gains, not charged by virtue of any of the other Schedules. . . .” (1853, sec. 2.)

The profits chargeable under Schedule D are divided into six cases, viz. :—

Case I.

Case I.—In respect of any trade, manufacture, adventure, or concern in the nature of trade, not contained in any other schedule of the Act, unless the trade, &c., has been set up and commenced within the year of assessment, in which case it falls under Case VI.

Case II.

Case II.—In respect of professions, employments, or vocations not contained in any other schedule of the Act, unless the profession, &c., was entered upon within the year of assessment, in which case it falls under Case VI.

In Cases I. and II. the profits are to be estimated on an average of the three preceding years. See *post* as to a business, &c., set up within that period.

Case III.

Case III.—In respect of profits of an uncertain annual value not charged under Schedule A.

In this case the assessment is on the amount arising in the preceding year.

Case IV.—In respect of interest arising from securities in the British plantations of America, or in any other of His Majesty's dominions out of the United Kingdom, and foreign securities, except such annuities, dividends, and shares as are directed to be charged under Schedule C. **Case IV.**

Here the assessment is on the amount which has been or will be received in the United Kingdom in the current year.

Case V.—In respect of possessions in the British plantations of America, or in any other of His Majesty's dominions out of the United Kingdom, and foreign possessions. **Case V.**

In this case the assessment is on the average amount actually received in the United Kingdom during the three preceding years.

Case VI.—In respect of any annual profits or gains not falling under any of the foregoing rules, and not charged by virtue of any other of the schedules. In this case are included profits, &c., derived from a trade, &c., set up, or profession, &c., entered upon within the year of assessment. **Case VI.**

Here the assessment is to be either on an average or otherwise, as the Commissioners may direct.

British subject temporarily abroad chargeable.

Foreigner in United Kingdom temporarily not chargeable.

Residence.

Employee permanently abroad.

Remittances from abroad.

A British subject temporarily residing abroad is liable to tax on the whole of his profits; and, conversely, a person residing in the United Kingdom temporarily is not chargeable except as to any business, &c., carried on in the United Kingdom. A person residing here, even at different times, for a total period of six months in any year is chargeable; so also is any person who shall leave the country after claiming exemption and return on or before the 5th April following (1842, sec. 39). A person keeping an establishment in any place may be said to reside there, though he may not go there for years.

We believe endeavours have sometimes been made to charge an employee permanently residing abroad.

So far as we can see, such a claim could only be substantiated by a contention that the expression profits, &c., accruing from any trade, &c., “exercised within the United Kingdom” (see Schedule of Charge, p. 57) means profit accruing to one person from a trade carried on by another person. It is fairly clear, however, that the expression means a trade carried on by the person *sought to be charged*. Any other construction is straining the words of the Act.

Where a wife receives remittances from her husband abroad the question of her liability is governed by Instruction 363 to Surveyors of Taxes, viz. :—

“A wife receiving an allowance or remittance from her husband abroad is to be charged for the same as his agent (under the second proviso to sec. 45 of the Act of 1842) when

the remittances are derived from any kind of property out of the United Kingdom, whether real or personal, movable or immovable. Remittances derived from trade profits, salary, &c., are not taxable."

In the case of *In re Young* (Court of Exchequer, Scotland, 10th July 1875) the appellant, who was master of the s.s. "Olympia," trading to New York, &c., was consequently only in England eighty-eight days in the year. He had, however, a house for his wife and family in Glasgow. It was held that he was "resident" in Great Britain and only temporarily absent, and thus assessable.

Re Young.
"Residence."

In *Rogers v. Inland Revenue* (Court of Session, Scotland, 28th June 1879) Mr. David Rogers, who was in command of the ship "Saint Magnus," of Glasgow, which traded to the East Indies, had been absent from July 1877 up to April 1879. He had a dwelling-house in Fifeshire, where his wife and family had resided during that time. He sought to be exempt from income tax on his salary on the ground that his absence from Great Britain was not of the *temporary* character contemplated by sec. 39 of the Act of 1842. The Court held, however, that he had a residence in Great Britain, and that the fact of his having been absent during the entire year was a mere accident, and he was liable to be assessed as a "resident" in Great Britain, following the above case.

Rogers v. I.R.
Captain of ship
"resides"
here though
absent for the
whole year.

In *Lloyd v. Sulley* (Court of Session, Scotland, 12th March 1884) it was held that a merchant carrying on business in Italy, and ordinarily residing there, but also having a place of residence in the United Kingdom, where he dwelt with his family for several months in the year, was "resident" in the United Kingdom.

Lloyd v. Sulley.
Merchant
ordinarily in
Italy, but
having place
of residence
in United
Kingdom
"resides"
here.

**Cooper v.
Cadwalader.**
“Residence.”

These cases were followed in *Cooper v. Cadwalader* (Court of Session, Scotland, 22nd November 1904). Mr. Cadwalader is an American citizen ordinarily residing in New York, but he rented certain shootings and Millden Lodge, Forfarshire, for three years from 1st February 1900, afterwards extended two further years. Mr. Cadwalader resided at Millden for two months in each year, and a caterer from London supplied him with food and servants. He had not any place of business in the United Kingdom, and during his stay at Millden his establishment in New York was kept up so that he could return to it at any time. The Lord President, in holding Mr. Cadwalader liable to assessment, on remittances from abroad, pointed out that a person may have residences in more countries than one. He undoubtedly “resided” at Millden, and could not have the benefit of sec. 39 to a person residing in the United Kingdom “for some temporary purpose only, “and not with any view or intent of his establishing his “residence there. . . .”

**Brown v.
Burt.**
Residence on
Yacht.

In *Brown v. Burt* (Court of Appeal, 26th July 1911) it was held that a person who habitually lived on a yacht, which was moored at a place in the river Colne, within the port of Colchester, was “resident” in the United Kingdom.

**A.-G. v.
Black.**
Duty on coal
is a “profit.”

In the case of *Attorney-General v. Black*, heard in the Court of Exchequer, 24th and 26th January and 17th June 1871, the facts were as follows:—

A “rate or duty” on coal landed on the beach, or otherwise brought into the town of Brighton, and originally directed to the maintenance of sea-walls, was granted by a local Act to the Corporation of Brighton. Coals which were sent beyond the limits of the town were exempt from the rate. By another Act the rate was increased, and it was enacted that any surplus from it should be devoted to aid the rate for paving, watching, lighting, &c., the town. A subsequent Act, repealing the former Acts, empowered the corporation to buy lands, widen streets, build a town hall, raise a general district rate, and continue to impose the “rate or duty” on coal, and enacted that all other rates, duties, assessments, and impositions authorised by the Act should be consolidated into one fund, and be applied to the general purposes thereof.

A.-G. v. Black.

Duty on coal is a “profit.”

It was held that this “rate or duty” was a “profit” within Schedule D, and was consequently liable to duty under the Income Tax Acts.

In *Glasgow Corporation Water Works v. Inland Revenue* (Court of Session, Scotland, 26th May 1875) the corporation were held to be liable to assessment only in respect of interest, &c., from which they retained tax. The water rate was a compulsory one, levied on all persons, whether consumers or not, and the corporation could not make a “profit.”

Glasgow Corporation.

Surplus of water rate not liable to tax.

But in *re The Glasgow Corporation Gas Commissioners* (Court of Session, Scotland, 20th June 1876) it was held that there were profits of the Gas Department. There was not any power to levy a rate or to compel anyone to buy gas. It was

Surplus of gas profit liable.

quite optional whether a person took the gas or not, and any surplus was “profit,” and was liable to taxation.

Gilbertson v. Fergusson.

English branch of foreign bank entrusted with payment of dividends out of their own earnings, having paid tax on profit, not to be further assessed under Schedule D.

The case of *Gilbertson (on behalf of the London Agency of the Imperial Ottoman Bank) v. Fergusson* was heard in the Exchequer Division of the High Court of Justice on the 4th July 1879, and upon appeal in the Court of Appeal on the 10th May 1881. The facts of the case were shortly as follows :—

A foreign company carrying on business and earning profits abroad had an agency in London, which conducted a branch and earned profits. The dividends of the company were payable, at the option of the shareholders, either abroad or by the agency. In a particular year the agency earned an amount of profits which enabled them to pay all the dividends payable by them in that year without requiring or obtaining any remittance from the company abroad. The agency were assessed to income tax under Schedule D on the profits earned in the United Kingdom on an average of the three preceding years, the amount on which they were so assessed being less than the amount of those profits in that year. Section 10 of the Act of 1853 provides that all persons entrusted with the payment in the United Kingdom of dividends of any foreign company, &c., are to deduct tax on payment thereof, and to furnish particulars to the Board of Inland Revenue, and an assessment is to be made upon them by the Commissioners for Special Purposes. In lieu of a further return under this section the agency handed in a

statement to the effect that no interest, dividends, or other annual payments payable out of or in respect of the stock, funds, or shares of the company had been entrusted to them for payment in the United Kingdom, and they appealed against an assessment of the Commissioners, whereby they were charged also in respect of the whole of the dividends paid by them, leaving them to prove upon appeal what amount should be deducted as having been included in the assessment on the profits earned in the United Kingdom.

Gilbertson v. Fergusson.

English branch of foreign bank entrusted with payment of dividends out of their own earnings, having paid tax on profit, not to be further assessed under Schedule D.

The Judges of the Exchequer Division differed in opinion, the judgments of Mr. Baron Huddleston and Mr. Baron Pollock being in favour of, and the judgment of Chief Baron Kelly being against, the Crown.

It was held by the Court of Appeal (Lords Justices Bramwell, Brett, and Cotton), affirming the judgment of the Exchequer Division, that the agency were entrusted with the payment of dividends in the United Kingdom within the meaning of the section, and that they were liable to be assessed on the full amount of the dividends they so paid in the year, but that since the dividends were payable out of the general earnings of the company, consisting of profits made partly in the United Kingdom and partly elsewhere, and the agency had already been assessed to income tax on the former under Schedule D, an allowance should be granted in assessing the dividends in respect of that portion of the dividends which arose out of the business carried on in the United Kingdom.

*Mersey Docks
and Harbour
Board v.
Lucas.*

*Profit
assessable
irrespective of
its
application.*

The case of *The Mersey Docks and Harbour Board v. Lucas* was heard in the Queen's Bench Division on the 16th March 1881; on appeal in the Court of Appeal on the 6th and 7th December 1881; and subsequently in the House of Lords, 26th and 28th June 1883. The facts were shortly as follows:—The Mersey Docks and Harbour Board were constituted by Act of Parliament a corporation for the management of the Mersey Dock Estate. Under the Act the surplus revenue of the Board, which was derived from dock dues, &c., after payment of interest on moneys borrowed, was to be applied towards a sinking fund for the extinguishment of the principal moneys spent in the construction of the dock, and for no other purpose whatsoever.

The Dock Board contended that their liability to income tax did not extend beyond the sum paid for interest on the debt. The Surveyor contended that they were liable for tax on profits, and not in respect of interest only.

The judgment of the Queen's Bench Division was against the Crown, but it was held by the Court of Appeal, and subsequently by the House of Lords, that the surplus moneys which remained after payment of the expenses of earning the same, and which, under the statute, could only be applied in a particular manner for the purpose of reducing the past debt, were available as "profits," and were assessable to income tax.

In *Paddington Burial Board v. Commissioners of Inland Revenue* (Queen's Bench Division, 13th and 14th March 1884) the Board claimed that they were not liable to be assessed to income tax on their gains, on the ground that such gains could not be "profits" because they were applied in aid of the poor rate. The Court held that the Board clearly made a profit, and the destination of it was immaterial. They therefore gave judgment for the Crown.

Paddington Burial Board v. Commissioners of Inland Revenue.

Profit assessable irrespective of its application.

In *Sulley v. The Attorney-General* (Court of Exchequer, 11th May 1860) one partner in a United States house resided at Nottingham, and purchased and shipped goods abroad, the other partners residing in the United States. The profits were made by the resale of goods in America; no money was received here except from New York; a large part of the profits of the firm was made by the resale of goods purchased in America, France, and Germany. It was held that the only profit assessable was so much of the share of the partner resident here as came to this country.

Sulley v. Attorney-General.

Partner of United States house residing here.

In the case of *Partridge and Hancox v. Mallandaine* (Queen's Bench Division, 13th December 1886) the appellants sought to escape payment of income tax on income from betting transactions. It was admitted that they made a practice of attending racecourses as bookmakers or bettors, but they argued that they were not carrying on any "profession, trade, vocation, or employment" within the meaning of the Act, that their gains were illegal, and could not be recovered by law, and that they were not the gains and profits

Partridge and Hancox v. Mallandaine.

Profits of betting transactions liable.

of any trade contemplated by the Legislature, and that there was not any income tax payable. The Court held that the word "vocation" was a very large and wide one, and covered such a case. They therefore gave judgment for the Crown.

**Sowrey v.
Harbour
Mooring Com-
missioners of
King's Lynn.**

**Corporation
liable to tax
on tolls.**

In *Sowrey v. Harbour Mooring Commissioners of King's Lynn* (Queen's Bench Division, 23rd and 24th March 1887) the Commissioners were held liable to tax on tolls raised by them, and payable to the corporation, in respect of a contribution by the corporation of £60,000 towards the cost of making a cut from the Wash to King's Lynn.

**Adam v.
Maughan.**

**Baths liable
(Schedule A)
though no
profit.**

In *Adam v. Maughan* (Court of Session, Scotland, 15th November 1889) the question was raised whether the excesses of revenue over expenditure in connection with the Edinburgh Markets and Slaughter Houses (which were applied for public purposes), were "profit" (under Schedule A, No. III.), and they were held to be so; it was also held that the baths were assessable under Schedule A though not yielding any profit.

**Webber v.
Glasgow
Corporation.**

**Liability in
respect of
certain dues.**

The question of the assessment of certain dues payable to a corporation was raised in *Webber v. Glasgow Corporation* (Court of Session, Scotland, 19th January 1893), on appeal by the corporation. The case, however, was not argued, and the Court gave judgment for the Crown (following *Adam v. Maughan*) without expressing any opinion on the merits of the case.

In *Harris v. Corporation and Burgh of Irvine* (Court of Session, Scotland, 12th and 22nd June 1900) the corporation supplied water to neighbouring parishes, which parishes paid in respect thereof an annual sum based on the gross rental of the parishes, and raised by compulsory rate. It was held that the profit thereon was assessable, since the compulsory rate was not levied by the corporation but by the parishes; it was further held that the portion contributed to the sinking fund was equally liable (following the *Mersey Dock* case, p. 66).

Harris v. Irvine Corporation.
Water supplied to other parishes.

In *Harris v. Edinburgh Corporation* (Court of Session, Scotland, 18th June and 19th July 1907) the question arose as to the assessment of certain slaughter-houses owned by the corporation. The revenue is (by an Act of 1850) to be employed—

Harris v. Edinburgh Corporation.
Slaughter-houses.

- (1) In payment of expenses.
- (2) In payment of an annuity of £1,000, for interest on capital advanced by the corporation.

And, so far as possible, the revenue is to be kept down to a sum covering these two items.

The corporation contended for either (1) an assessment according to the rules of Schedule D, under No. III., Rule 3 of Schedule A (on profits); or (2) an assessment of £1,000 under Schedule A.

**Harris v.
Edinburgh
Corporation.**

The Surveyor contended that the houses were capable of being let at an annual rent, and should be assessed accordingly, and any surplus profit was assessable under Schedule D, Case I.

The Court held that the concern was assessable under Schedule A on annual value, the provisions as to assessment of property under Schedule A on profits not being applicable where the concern was expressly prohibited from making a profit.

**Lord
Advocate v.
Forth Bridge
Railway Co.**

**Company not
having made
profit equal to
interest must
pay tax on
interest.**

The case of *Lord Advocate v. The Forth Bridge Railway Company* was decided by the Court of Session, Scotland, 17th October 1890. The company were not making any profit, but were paying interest on capital during construction, and they returned the amount so paid in the year previous to the year of assessment, and were assessed thereon. The amount paid in the year of assessment being greater than the amount in the previous year, the Revenue claimed tax on the difference. It was held that the company were liable (under the Act of 1888, sec. 24 *post*).

It should be noted that this decision relates only to cases where there have not been any profits made out of which to pay interest, or where the profits made (or net assessment after abatement and insurance have been allowed) are less than the interest payable on borrowed money—the interest in such cases being therefore wholly or partially payable out of capital. The tax is, indeed, deducted by persons or companies as collectors for the Revenue, and where it has not been paid

over to the Crown by the person or company returning their profits for assessment without deduction of interest, it has to be specifically paid.

In *The Religious Tract and Book Society of Scotland v. Forbes* (Court of Session, Scotland, 2nd January 1896) it appeared that the Society sold Bibles, &c., at a shop in Edinburgh, and sent out travelling vendors (colporteurs), who sold Bibles and acted as cottage missionaries. The sales at the shop resulted in a profit, but the other transactions in a loss. The net result was an annual loss, met by subscriptions. It was held that the colportage was not a trade, nor an appurtenance of a trade, and that the loss on it could not, for the purposes of income tax, be set against the profits from the shop business.

Religious Tract Society v. Forbes.

Loss on colportage not allowed to be set off against trading profits.

In the case of *Assets Company, Lim. v. Forbes* (Court of Session, Scotland, 23rd February 1897), the facts were as follows :—A company, formed of solvent contributories of the City of Glasgow Bank, acquired from the liquidators the outstanding assets of the bank, including sums expected to be recovered from estates of contributories, paying therefor a sum sufficient to enable the liquidators to discharge the liabilities of the bank. From time to time the company sold portions of these assets at prices exceeding the values at which they were estimated in the books of the liquidators.

Assets Co., Lim. v. Forbes.

No liability in respect of profit on a single transaction.

The Court held that the case, as stated, did not contain materials for a decision whether profits liable to assessment

*Assets Co.,
Lim. v.
Perbes.*

*No liability
in respect of
profit on a
single
transaction.*

had been made or not, but some of the statements in the judgment of Lord Young are of interest. He said :—

“ . . . Now, what about recoveries from debtors? The company took them over. I should say that I have really no doubt that any person, or any company, making a trade of purchasing and selling investments, will be liable to income tax upon any profit which is made by that trade. It is quite an intelligible business. . . . But it is another proposition altogether that, where there is not a trade, a gain or loss upon the purchase and re-sale of property comes within the meaning of the Income Tax Acts. Take even proper traders: if proper traders sell their old premises and buy new ones, and sell the old premises at a higher price than they paid for them. . . . I should say it was a totally untenable proposition that anything in excess of what they had paid for the old premises . . . is income within the meaning of the Act. I do not think it is at all. It is no more so in the case of a trader's income than in the case of a private individual selling his house at more than he had paid for it. . . . They were not making a trade of buying and selling debts. . . . The proposition that where anybody purchases a doubtful debt, and makes more than he paid for it—one purchase, he not being a trader in that kind of thing—that that is income, is, I think, a proposition which cannot be sustained. . . . ”

This is certainly a liberal construction of the Acts from the public point of view. It might readily be said that there is a distinction between this case and that of a private individual. The company was formed for the express object of making a profit in the manner described, and it would seem that that profit should just as much be taxed as the profit of, say, a building company. •

In *Paisley Cemetery Co. v. Reith* (Court of Session, Scotland, 15th June and 5th July 1898) the facts were as follows:—The company make a charge of 1s. 6d. for the keeping and dressing of a lair for one year, or a slump sum of £2 for doing it in perpetuity. Where the amount of £2 was paid it was credited direct to Capital Account, and formed part of the funds accumulated and invested. There was, however, no contract to so set the amount aside. The company claimed that such sums were not assessable, being properly treated as capital.

Paisley Cemetery Co. v. Reith.

Slump sum for upkeep of lairs.

The Court held that the amount was clearly assessable, following the principle laid down in previous cases.

In *Armitage v. Moore* (Queen's Bench Division, 9th May 1900) the trustee of Craven & Craven had realised a great portion of the estate, and paid dividends amounting to 8s. 6d. in the £. He continued, however, to supply steam-power at a profit. He contended that this was not an actual profit, but only the liquidation of a loss already incurred. It was held that, the rest of the business having ceased, this was an assessable profit.

Armitage v. Moore.

Bankrupt business—one portion carried on—profit.

In the case of *Grove (Surveyor of Taxes) v. Young Men's Christian Association* (King's Bench Division, 15th May 1903) it was sought to escape liability from taxation in respect of the profits of a restaurant carried on by the London Young Men's Christian Association. The Young Men's Christian

Grove v. Y.M.C.A.

Profits of restaurant.

Association contended that as the restaurant was carried on in conjunction with, and formed part of, their scheme and work they were entitled to consider it as a department only of their work, and that they were entitled to deduct the losses on other branches of their work—viz., Educational Classes, Gymnasium, and Publication Departments—from such profit, and that the accounts as a whole showed a loss.

The Court gave judgment for the Crown, considering the case was indistinguishable from *The Religious Tract Society* case (p. 71), the restaurant being carried on on commercial principles, but the other departments of the Young Men's Christian Association work not being so carried on, and consequently the loss on them could not be set off (under sec. 101).

**Californian
Copper
Syndicate.**

**Sale for
Shares.**

The case of the *Californian Copper Syndicate v. Harris* was heard in the Court of Session, Scotland, 21st and 22nd June and 1st July 1904. The company acquired copper-bearing land in Fresno, California, for £24,000. They sold the same to the Fresno Copper Company, Lim., for £300,000, payable in fully-paid shares. The profit, if any, was agreed to be £30,000, but the company contended that they had simply substituted capital in shares for capital in land, and that any benefit was a growth of capital and not of income, and that in any case tax was not payable till the shares had been realised. The Commissioners held that the property was acquired with the object of re-sales, and that by such re-sales they carried on a concern in the nature of trade.

The Court held that the company was in its inception formed with the object of making profit from the sale of its property. The transaction was essential, being the appointed means of making gains, and the company was liable.

Lord Justice Clerk stated it to be a well settled principle that where the owner of an ordinary investment realised it at an enhanced price the difference was not assessable unless carrying on or carrying out a business (as in the case of a person or association of persons buying or selling lands, &c., speculatively, in order to make a gain).

In *Tebraii (Johore) Rubber Syndicate, Lim., in Liquidation, v. Farmer* (Court of Session, 16th July 1910) it was held that the syndicate was formed for the purpose of growing and trading in rubber, and that the surplus on sale of their assets to a new company was a realisation of their capital, and was therefore not liable to income tax.

***Tebraii
Rubber
Syndicate v.
Farmer.***
**Sale of
concern.**

The case was distinguished from that of *The Californian Copper Syndicate* (p. 74) on the ground that in that case the object of the company was to sell the property at a profit; it was not so in this case.

One of the most important cases as to the liability to assessment of profits abroad is that of *Colquhoun v. Brooks*. Mr. Brooks resided solely in England, and was a partner in the firm of Hy. Brooks & Co., of London, and of Brooks, Robinson & Co., of Melbourne. The two businesses were distinct. Mr. Brooks returned for assessment the profit

***Colquhoun v.
Brooks.***
**Liability of
person
residing in
United
Kingdom in
respect of
profits of
business
carried on
abroad.**

Colquhoun v. Brooks.

received in England in respect of his interest in the Melbourne firm. There was, however, a further sum placed to his credit with the Melbourne firm, in respect of profit not remitted to England; and he was assessed not only upon the amount received in England, but upon this further sum. The Income Tax Commissioners reduced the assessment to the amount of Mr. Brooks's return, but stated a case for the opinion of the Court. The Divisional Court were divided in opinion, but the junior Judge withdrew his judgment, and judgment was entered for the Crown. This decision was overruled in the Court of Appeal, and on being carried to the House of Lords they affirmed the decision of that Court. The claim was based on Schedule D of the Act of 1853, sec. 2, whereby duties are imposed—

“for and in respect of the annual profits or gains arising or accruing to any person residing in the United Kingdom from any kind of property whatever, whether situate in the United Kingdom or elsewhere; and for and in respect of the annual profits or gains arising or accruing to any person residing in the United Kingdom from any profession, trade, employment, or vocation, whether the same shall be respectively carried on in the United Kingdom or elsewhere,” &c.

**Prima facie
liable on
total profit.**

In giving judgment (9th August 1889) Lord Herschell said he thought it must be admitted that the words of the statute did *prima facie* support the contention of the Crown. The respondent did reside in the United Kingdom, and profits did arise or accrue to him from a business carried on elsewhere than in the United Kingdom. Reliance had been placed upon decisions under the Legacy and Succession Duty Acts which had imposed a limit upon the broad language of

these enactments, which without such limitation would apply, although neither the testator, nor the legatee, nor the property, was within or had relation to the British dominions. A construction leading to such a result was obviously inadmissible. But the Income Tax Acts also imposed a limit, and if the person whose income was sought to be taxed was resident in the United Kingdom, he thought it was competent to the Legislature to determine the measure of taxation to be applied to him. At the same time, he was far from denying that if it could be shown that a particular interpretation of a taxing statute would operate unreasonably in the case of a foreigner sojourning in this country, it would afford a reason for adopting some other interpretation if it were possible consistently with the ordinary canons of construction. It was clear from the Act that, as regards income from investments, or from possessions outside the United Kingdom, the tax was only payable on so much of the income as was received in this country. If the contention of the Crown were correct, there was no such limit in the case of a foreign income arising from a trade, &c., carried on abroad, and the whole would be subject to taxation, though no part of it ever reached this country. This would be a glaring anomaly, but would not avail the respondent if the taxation were imposed by the clear language of the statute. But as was said by Lord Blackburn in *The Coltness Iron Company v. Black*, if any taxing enactment would bear two interpretations, it was only reasonable to apply that construction which would raise the tax as equally as possible.

Colquhoun v. Brooks.

Decisions under Legacy Duty Acts not analogous as no limitation in those Acts,

whereas Income Tax Acts impose limit.

If a particular construction of Act would operate unreasonably some other interpretation to be acted on if possible.

Decision in *Coltness Co. v. Black* in point.

Colquhoun v. Brooks.

"It is beyond doubt, too," continued Lord Herschell, "that we are entitled, and, indeed, bound, when construing the terms of any provision found in a statute, to consider any other parts of the Act which throw light upon the intention of the Legislature, and which may serve to show that the particular provision ought not to be construed as it would be if considered alone and apart from the rest of the Act."

Not any machinery for assessing duty on profits remaining abroad.

The respondent had contended that by thus seeking the aid to be derived from other provisions of the Acts it would be seen that the Surveyor's view was erroneous. His Lordship then considered the machinery provided for carrying out the taxing purposes of the Act, and he was of opinion that the respondent had shown that the Act had not provided the requisite machinery for assessing the duty on trade profits arising to a sleeping partner and remaining abroad. This he considered a strong point towards showing that it was not intended to tax them. Again, the rules provided that in case of any partnership the assessment was to be made jointly in all cases except for the partners claiming exemption, &c. (1842, sec. 100, third rule, applying to first and second cases). Now it was not contended that the whole of the profits of the Australian firm were assessable; the shares of the Australian partners clearly could not be taxed. By what authority, then, did the Crown contend for such a separate statement and assessment as was here claimed? He did not think that a rejection of the argument on behalf of the Crown would lead to the conclusion that profits received here from a business carried on abroad were not subject to tax. Such a conclusion would be a formidable obstacle to yielding to

Not sought to tax profit of other partners abroad. By what authority could a separate assessment be claimed by Crown?

the argument of the respondent. He thought the word "possessions" in the fifth rule—charging duty in respect of possessions in the Colonies, &c., on the sum actually received in the United Kingdom—was meant to include more than "property," if not, he could not think but that the word "property" would have been used. "Possessions" was a wide expression, and he did not think any violence would be done to the language if it were held to include the interest which a person in this country possessed in a business carried on elsewhere. Such a construction would remove the glaring anomaly above referred to. The conclusion he had come to was strengthened by the 39th section of the Act of 1842, which exempts persons temporarily residing in England from tax in respects of profits received from foreign possessions. If the contention of the Crown were upheld such a person would still be liable to taxation in respect of the entire profits arising from a business carried on abroad, though not received here. He considered that the whole section pointed strongly to the conclusion that money received in this country arising from possessions or securities outside its limits was supposed to be the only portion of foreign income which was taxable. Some anomalies might possibly result from his decision, but it appeared to him the one least open to objection and most in accordance with the intention of the Legislature, so far as he gathered it from the provisions of the Acts taken as a whole.

Colquhoun v. Brooks.

"Possessions" different from "property."

Amount received in United Kingdom is the only amount taxable in respect of foreign possessions or securities.

A question has been raised as to the liability to income tax of a firm consisting of two partners, and having a house here

Liability of firm having house abroad managed by partner resident there.

**Liability of
firm having
house abroad
managed by
partner
resident there.**

managed by one permanently residing here and another abroad (a separate business) managed by the other who permanently resides abroad. The point is not entirely free from doubt, but it is submitted, on the authority of *Colquhoun v. Brooks*, that in respect of the profits of the foreign house, they are only liable in respect of such portion of the profits as are remitted to the United Kingdom.

In any case, the position as to a firm in Scotland might be different, it being a separate *persona* under Scotch law and domiciled there.

**Ogilvie v.
Kitton.**

**Owner of
Canadian
business.**

In *Ogilvie, Senr. v. Kitton* (Court of Session, Scotland, 17th June 1908), it was held that the sole proprietor of a business in Canada who resided here was liable to tax on the whole profit, whether remitted here or not.

**Businesses
abroad.**

With respect to the question of the taxation of companies carrying on business abroad, these may be divided into three classes :—

- (1) Those registered here but whose operations take place abroad.
- (2) Those registered here and carrying on business abroad by means of a subsidiary company.
- (3) Those registered abroad but controlled from here.

The decision in the House of Lords in the *San Paulo* case establishes the principle to be applied in cases falling into Class 1; the decision in the *Schoenhofen Brewery* case

establishes the principle for cases in Class 2 ; and that in the *De Beers* case establishes the principle for Class 3.

**Businesses
abroad.**

The facts and decisions in these cases were as follows :—

The San Paulo (Brazilian) Railway is registered under the Companies Acts, and has its office in London. The control and direction of it are in London, and the business of the company is carried on under the direction of the directors here. Purchases of rails, engines, &c., are made by the directors here ; the accounts are kept in London, and meetings are held and dividends declared and paid in London.

***San Paulo
Railway v.
Carter.***

**Railway in
Brazil.**

The House of Lords held (*San Paulo (Brazilian) Railway Company v. Carter*, 17th December 1895) that the company was liable to tax on the whole of its profits, whether remitted to the United Kingdom or not. The profit was £375,000, of which only £295,000 had been transmitted to this country. It did not appear why the difference had been retained, or how it had been applied.

Lord Watson, in the course of his judgment, said :—

“ When it has been ascertained that a person interested in the profits of a trade has his residence in the United Kingdom in such sense as to bring him within the incidence of the Income Tax Acts, the only question remaining for determination is whether the measure of his liability is to be found in the first or in the fifth case of Schedule D. In the one case he is liable to pay duty in respect of the net profits accruing to him from such trade, in the other in respect only of such part of those profits as shall have been actually received by him in this country. But he cannot, according to the rule established in *Colquhoun v. Brooks*, escape from liability under the first case unless he is able to show that no part of the trade is

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**Businesses
abroad.**

carried on within the United Kingdom, or, what comes to precisely the same thing, that it is exclusively carried on in a country or countries outside the United Kingdom, whether subject to Her Majesty or not. If he succeeds in proving that fact, his liability will be under the fifth case. . . . To my mind it is perfectly clear that in point of fact part of (the company's) trade is carried on (in England)."

**Schoenhofen
Brewing Co.,
Lim.****Company
worked by
subsidiary
company.**

The Peter Schoenhofen Brewing Co., Lim., is registered under the Companies Acts and has its registered office in London. It was formed to acquire a brewery in the United States.

As, by the American law, a foreign company cannot hold American properties, an American company was formed. All the shares of this company except three are held by the English company. The shares of the English company are held partly here and partly in America. The amount required for payment of dividend to the American shareholders is retained in America. The Surveyor sought to assess the whole of the profits to income tax, but the company contended that they were only liable in respect of the profit remitted to England.

The affairs of the brewery can be, if necessary, directed from and administered at, the registered office by the board, who have the entire right of control and the entire directing power over the affairs of the American company. As a fact, however, the directors delegated their power to the managers of the brewery at Chicago, who were the directors of the American company, and who were appointed as a committee of management in America. During the year the chief busi-

ness personally transacted by the board in England was the passing of transfers, the payment of dividend in England, the consideration of reports received from America, and the issuing of the Balance Sheets, &c.

**Businesses
abroad.**

The Court of Appeal held (*Apthorpe v. Peter Schoenhofen Brewing Co., Lim.*) (Court of Appeal, 6th March 1899), that the whole of the profits were chargeable, considering that the observations in the judgment of the *San Paulo* case applied.

The De Beers Consolidated Mines, Lim., is a company registered in the Cape Colony. It owns or is interested in extensive diamond mines, &c., in South Africa, and investments in English Government Securities. By its articles of association its head office is to be at Kimberley, or at such other place as the directors shall deem fit. The company has offices in London and Kimberley. Under the articles of association "four at least of the directors shall reside in England."

**De Beers
Mines, Lim.
Directing
power in
London.**

The profits are derived chiefly by the sale of diamonds to a syndicate of six or seven firms under contract. The said contracts are negotiated and executed in London, and the firms composing the syndicate are all described as of London.

The Commissioners found (1) that the business was one business carried on at the London office, and (2) that the head and seat and directing power were at the office in London.

Businesses abroad.***De Beers Mines, Lim.*****Directing power in London.**

The House of Lords held (*De Beers Consolidated Mines, Lim. v. Howe*, 18th and 19th June and 30th July 1906) that these conclusions of fact could not be impugned, and that the company was resident within the United Kingdom and assessable on the whole of its profit.

In consequence of the decision the company have altered their articles of association.

Older cases.

The following cases, which were dealt with at greater or less length in the previous Editions of this work, may be referred to on special facts, though they seem to be covered by the above:—*The Attorney-General v. Alexander and others* (Court of Exchequer, 20th November 1874); *Cesana Sulphur Co., Lim. v. Nicholson*, and *Calcutta Jute Mills Co., Lim. v. Nicholson* (Court of Exchequer, 31st January and 1st and 2nd February 1876); *Erischen* (Representative of the London Agency of the Great Northern Telegraph Company of Copenhagen) *v. Last* (Court of Appeal, 6th December 1881); *London Bank of Mexico and South America v. Apthorpe* (Court of Appeal, 3rd June 1891); *Bartholomay Brewing Co. (of Rochester) Lim. v. Wyatt* (Queen's Bench Division, 12th August 1893); *Nobel Dynamite Trust, Lim. v. Wyatt* (on the same day); *Denver Hotel Co., Lim. v. Andrews* (Court of Appeal, 14th February 1895); *Grove v. Elliotts & Parkinson*, and *Elliotts & Parkinson v. Grove* (Queen's Bench Division, 13th May 1896); *Frank Jones Brewing Co. v. Apthorpe*, *United States Brewing Co. v. Apthorpe*, and *St. Louis Breweries v. Apthorpe* (Queen's Bench Division, 13th

December 1898); *Goers & Co., Lim. v. Bell* (King's Bench Division, 9th March 1904). Businesses abroad.

Two cases on the border line are those of the *Kodak Co.* and the *Gramophone Co.*

In *Kodak, Lim. v. Clark* (*Surveyor of Taxes*) (King's Bench Division, 19th June 1902, Court of Appeal, 13th February 1903), the question was again raised as to the liability of a company registered in England and holding 98 per cent. of the shares of another company abroad (the Eastman Kodak Company). Phillimore, J., in reviewing the various cases previously decided, called attention to the difference between "controlling" and "carrying on" a business. A company might control another, but it did not necessarily follow that it carried it on. In this case the English company neither carried on nor controlled the American company. The American company were manufacturers and the English company were buyers. He gave judgment for the appellants, and directed that there was no evidence upon which the Commissioners could have come to the conclusion as stated in the case (*viz.*, that the business and profits of the American company were the business and profits of Kodak, Lim.). There remained, however, he said, a serious question—whether 98 per cent. of the profits of the Eastman Kodak Company ought not to be returned (that question had not been argued before him) or whether the Crown could not compel Kodak, Lim., to make the Eastman Kodak Company return their profits. Those questions, he

Kodak, Lim. v. Clark.

Distinction between "controlled" and "carried on."

**Businesses
abroad.**

said, were matters upon which he was not asked to give a decision.

**Gramophone,
&c., Lim.
Shares in
independent
company.**

In *The Gramophone and Typewriter, Lim. v. Stanley* (Court of Appeal, 27th March 1908) the company held all the shares of the Deutsche Grammophon Aktiengesellschaft. Under the deed of association of the German company accounts were made up to 31st August each year, and one-third of the working profit was to be devoted to writing down patents. The official bodies of the company are a board of supervision and a board of management. The members of the board of management are also directors of the English company, and the members of the board of supervision are nominees of the English company. In the year in question the amount devoted as above was £15,000. The Commissioners held (1) that the English company controlled the German company, and (2) that the entire business of the German company was carried on by the English company, and that therefore the whole profits (including the £15,000) were assessable.

Walton, J., gave judgment for the company. He said there were *dicta* in *Kodak v. Clark* which appeared to be sometimes in favour of one side and sometimes of the other ; but he did not think *Kodak v. Clark* bound him on this question. He thought that the German company was not the business of the English company ; the fact of all its shares being held by the English company did not make it so. The English company had an *interest* in the German company, and that interest had been taxed. The appeal was therefore allowed.

The Court of Appeal approved this, pointing out that the German company was a genuine company and an independent entity.

**Businesses
abroad.**

Following these cases it would appear perfectly clear, by analogy, that where a company here works its business in foreign countries by means of subsidiary companies, of which it owns the whole share capital, it is quite in order to set off losses made by one company against profits made by another or others.

The decision in the *De Beers* case was followed in *New Zealand Shipping Co., Lim. v. Stephens* (Court of Appeal, 5th December 1907), and also in *American Thread Co. v. Joyce* (King's Bench Division, 15th February 1911).

***New Zealand
Shipping Co.,
Lim.***

***American
Thread Co.,
Lim. v.
Joyce.***

One of the earliest corporation cases is that of *The Attorney-General v. Scott* (Chamberlain of the City of London), heard in the Exchequer Division, 16th January 1873. The facts were :—

***A.-G. v.
Scott.***

**Raising
question as
assessment in
case of a
municipal
corporation.**

The Corporation of the City of London derive a large annual income from renewal fines, profits of markets, corn and fruit metages, brokers' rents, and Mayor's Court and other fees. The receipts from these several sources, after deducting the cost of collection, were carried to a general account from which was deducted the whole expenditure of the corporation for the civil government of the city, including the maintenance of the police, &c., and the balance was returned by the City Chamberlain (the proper officer of the corporation) as the profits of the corporation chargeable under Schedule D.

**A.-G. v.
Scott.**

It was admitted at the trial that the renewal fines were chargeable in the ordinary manner under Schedule A, No. II., Rule 5, of the Act of 1842, but with this exception it was contended that the defendant's return was correct.

It was held by the Court :—

That the profits of the corporation derived from market tolls, corn and fruit metages, brokers' rents, Mayor's Court fees, &c., were liable to income tax under Schedule D, without reference to the purposes to which they were applied ; and that the proper principle upon which the assessment should be made was to take each item or head of income separately, and to assess the income tax upon the net produce of such item, after deducting from the gross receipts the expenses incurred in earning and collecting the same.

**Glasgow
Water Com-
missioners v.
Miller.**

The facts in the case of *The Glasgow Water Commissioners v. Miller* (Court of Session, Scotland, 8th January 1886)

**Profit on
water supplied
beyond
municipal
boundary
liable to tax.**

were as follows :—

The Commissioners, by a local Act, were empowered (1) to levy a compulsory rate on all dwelling-houses within the municipal boundaries ; (2) to fix a rate for persons who chose to take water beyond the boundaries ; and (3) to sell water to manufacturers and others. The Act required the Commissioners in each year to fix a rate within the compulsory area, sufficient, with the other income, to defray the interest on the debt and the annual expenses, and to provide a sum to form a sinking fund for the redemption of the debt, and

it directed that any surplus in any one year should be applied to reduce the rate within the compulsory area in the following year.

Glasgow Water Commissioners v. Miller.

It was held that, while the rates levied within the compulsory area were to be regarded as sums levied to defray the cost of water supplied within the district, so that any surplus remaining over could not be regarded as profit, any surplus of rates—over outlay—collected beyond the compulsory area, or from sales to manufacturers and others, was profit which went to reduce the cost of the water supply to those within the compulsory area, and was liable to assessment to income tax under Schedule D.

In *Allan v. Hamilton Waterworks Commissioners* (Court of Session, Scotland, 22nd January 1887) the Commissioners were held liable, following the *Glasgow* case (above), for tax on profits derived from selling water by meter to barracks within the area of compulsory supply.

Allan v. Hamilton Waterworks Commissioners.

Corporation liable for profit on sale of water by meter.

The facts in the case of *Corporation of Dublin v. McAdam* were as follows:—By their Act the corporation were empowered to supply water to Dublin and certain extra-municipal districts, and to borrow money on the rates. By a further Act it was provided that the income derived from the extra-municipal districts was to form, with the city rates, a consolidated fund, available for payment of principal and interest on loans, &c. It was held by the Exchequer Division of the High Court of Justice in Ireland (13th, 14th, and 16th June 1887) that the excess of receipts over expenditure in

Corporation of Dublin v. McAdam.

Profit on water supplied beyond municipal boundary liable to tax.

respect of extra municipal districts was liable to income tax. There was not, of course, any profit in respect of water supplied within the city.

There have been a number of cases on the question of agency.

Tischler v. Apthorpe.

English agency of foreign firm. Crown may assess agents or principals.

In *Tischler and another v. Apthorpe* the appellants were wine merchants residing at Bordeaux, and carrying on business there. Messrs. Feuerheerd & Co., of London, acted as general agents for them, and were paid by commission. Mr. Geo. Tischler spent some months in England every year, but had no residence here, and always stayed at an hotel. Messrs. Feuerheerd & Co. reserved a room in their offices for the use of Mr. Tischler, and Messrs. Tischler's name was painted on their premises. The plaintiffs appealed against an assessment upon them in respect of the portion of their profits made in England, contending that they were not British subjects nor domiciled in England, and had no exclusive place of business in England. The Queen's Bench Division held (12th and 13th March 1885) that although the Crown had power to assess the agents in London if they chose to do so, yet that power was in aid of the Revenue, and did not prevent the Commissioners from assessing the foreign principals in respect of the profits made by them on that portion of their business which was carried on in this country, and the appeal was therefore dismissed.

***Pommery v. Apthorpe*, following the above.**

This case was followed in *Pommery v. Apthorpe* (Queen's Bench Division, 17th December 1886), where the facts were very similar.

In the case of *Iwerle v. Colquhoun* (Court of Appeal, 12th and 13th March 1888) a firm at Rheims employed a London firm to obtain orders in England, and had their name up on the business premises of the London firm. The Rheims firm had not any stock in England, and all orders were executed direct from Rheims. Any payments made to the London firm were remitted immediately to Rheims, and not carried to a current account. The London firm were paid by a commission, and had not any share of the profit on the sales. It was held that there was a trade exercised in the United Kingdom (the contracts being made here) from which profits accrued to the Rheims firm, and that they were assessable in respect of profits made in the United Kingdom.

Werle v. Colquhoun.

Liability of foreigners for tax on profit on orders obtained by agents in United Kingdom.

In the case of *Grainger & Son v. Gough*, in which judgment was given by the House of Lords, 1st May 1896, the facts were as follows:—Messrs. Grainger & Son, wine merchants, of London, are agents for Mr. Louis Roederer, of Rheims. All wine sold by them on his account is despatched to purchasers direct from Rheims, and all invoices are made out and sent from there by Mr. Roederer. Remittances are made either to Messrs. Grainger & Son, or direct to Mr. Roederer. Messrs. Grainger & Son are paid by means of a commission, and had paid income tax thereon. The assessments were made for 1884, 1885, and 1886 upon “Louis Roederer, of Rheims, champagne shipper, in the name of Grainger & Son, agents, 108 Fenchurch Street.” The appellants contended that Louis Roederer was not a person exercising a trade within the United Kingdom, and that the

Grainger v. Gough.

Question as to person exercising a trade within the United Kingdom or not.

Grainger v. Gough.

appellants were not agents within the terms of sec. 41 of the Act of 1842 (charging any person resident in the United Kingdom in the name of his "agent" or receiver "having the receipt of any profits" on his account), and that the assessment should be discharged, or that their names should be erased therefrom. The House of Lords held (reversing the decision of the Court of Appeal) that Mr. Roederer did not exercise a trade in this country (contracts not being made here nor delivery effected here), and that Messrs. Grainger & Son were not answerable to the Crown, as his agents, to pay income tax on the assessment made in respect of the business of their principal.

It was sought to establish that the words in sec. 41, "having the receipt of any profits or gains," applied only to "receivers," but the Court expressed a unanimous opinion that this was not so.

Wingate v. Webber.

Assessment of agent of foreign firm.

In *James Wingate & Company v. Webber* (Court of Session, Scotland, 2nd and 16th June 1897) the facts were as follows:—A steamship company which was registered abroad owned one vessel, the chartering, &c., of which was dealt with by a firm resident in Glasgow.

It was held that the company was not resident in the United Kingdom, but exercised a trade within the United Kingdom, and that the Glasgow firm were assessable as agents. ♡

In *Watson v. Sandie & Hull* the facts were as follows :— Messrs. Sandie & Hull are commission agents in Liverpool, Messrs. J. P. Squire & Co., of Boston, U.S.A., being one of the firms who make consignments to them. Messrs. Sandie & Hull are paid solely by way of commission. All goods are, however, invoiced in their own name, and they receive payment in the first instance. An assessment was made upon them (under secs. 41 and 44), in respect of the profits realised from a trade exercised within the United Kingdom by Messrs. J. P. Squire & Co. There were cited the cases of *Erischen v. Last* (p. 84), *Tischler v. Apthorpe* (p. 90), *Pommery v. Apthorpe* (p. 90), *Werle v. Colquhoun* (p. 91), and *Grainger v. Gough* (p. 91). The Queen's Bench Division gave judgment (13th December 1897) for the Crown. They considered the case stronger than the cases cited. Here the goods were all actually in England before the contract of sale was entered into. In other cases, some of them, at any rate, were in foreign countries.

Watson v. Sandie & Hull.

Assessment on agents having goods in hand.

In a similar case, *Turner v. Rickman*, a like judgment was given (Queen's Bench Division, 13th December 1898).

Turner v. Rickman.

In *Crookston Bros. v. Furtado* (Court of Session, Scotland, 29th September 1910) the Crown sought to assess Messrs. Crookston Bros. as agents of the Compagnie des Phosphates du Dyr, a company owning phosphate mines in Algeria, on the ground (1) that the company carried on a trade here, and (2) that Messrs. Crookston Bros. were "agents in receipt of the profits" (sec. 41). The facts were

Crookston v. Furtado.

"Agent in receipt" or not.

*Crookston v.
Furtado.*

"Agent in
receipt" or
not.

(1) the head office of the company is in Paris, where all its board and other meetings are held, its books kept, and its general business transacted ; (2) Messrs. Crookston Bros., of Glasgow, are the sole principal agents for sale in the United Kingdom ; their senior partner is *administrateur delegué* of the company, an honorary position and not carrying any salary ; sub-agents are appointed by Messrs. Crookston, subject to approval by the company ; (3) sales are made at or over minimum prices, fixed by the company but without reference to the company, but the agents are not liable for bad debts, and they hold no stock ; (4) contracts are sent from Glasgow, and signed " The Compagnie . . . per Crookston Bros. " ; (5) bills of lading are sent to the agents by post, and when endorsed by them are handed to purchasers, before the arrival of the goods, in exchange for three-fourths of the invoice price ; (6) invoices are rendered by the agents, and the price includes cost, freight, and insurance, but the freight is deducted from the invoice price and paid by the purchasers direct to the shipowners ; (7) cheques are made payable by the purchasers in some cases to the company and in other cases to the agents. The agents invariably send on the cheques to the company in Paris, and do not in any case pay them into a bank here. There has never been a case where payment has been made in cash, or where a cheque has been realised before the handing over of the shipping documents. Receipts are signed in the same way as the contracts. (8) The agents are paid by commission by remittance from the company in Paris.

The Court (Clerk, Ardwall, Salvesen, and Dundas, L.JJ.) gave judgment against the Crown. Lord Dundas differed from all the others on the question of "carrying on a trade" here, but the Court were unanimous in holding that Messrs. Crookston were not "agents in receipt." Clerk, L.J., said the goods were not delivered in the United Kingdom, for the Court were all of opinion that delivery took place either at Bona, the port of despatch, or where the bill of lading was endorsed, which took place before the goods reached here. He thought the facts brought the case under *Grainger v. Gough*; it was not the same as where the foreigner came here himself to solicit; or where there was a sole agent with their name up and holding a stock (*Pommery v. Greno*). Grainger's case laid down that the question of the contract being made here was not conclusive; the place of delivery and mode of payment were important elements. Also, inasmuch as Messrs. Crookston had to hand over any cheques received, and had no right to take possession of them, it could not be said that they were "agents in receipt."

Crookston v. Furtado.

"Agent in receipt" or not.

Lord Ardwall agreed. He said :—

"Were it to be affirmed that in this case the company were liable as exercising a trade within the United Kingdom, it appears to me that on similar grounds every foreign manufacturer, mine owner, or merchant who consigns goods to a commission agent in this country might be held liable."

In every other decided case there was some element not present in this case. Messrs. Crookston Bros. were not "representatives" in the sense that Erischen was in *Erischen v. Last*. On the second point he considered that it was not

*Crookston v.
Furlardo.*

"Agent in
receipt" or
not.

a "receipt" where the agreement was that there was no power for the agents to make the price of the goods payable to themselves.

Lord Salvesen likewise agreed. He said that any business man would have no hesitation in saying that the French company did not carry on a trade here. He did not suppose anyone would dream of saying that a merchant or manufacturer "exercised a trade" in every country where he sold his goods. A difficulty was occasioned by certain judicial *dicta* which might be construed as meaning that if contracts for the sale of merchandise were habitually made here and delivery took place here, then the foreign merchant "exercised a trade" here. But in none of the cases was this the only element; in all of them payment was regularly received here. "There is therefore," he said, "no case in which a foreign firm has been held to exercise a trade in this country, where it did not receive direct or through its agents payment in this country"—and the importance of this fact appeared in *Sully's* case (p. 67). He thought undue importance had been attached by some of the English Judges to the place where, in the legal sense, the contract was made. He said this because the foreign firm could always reserve the right of suspending any sale until its sanction had been obtained, and if so (under *Grainger v. Gough*) the contract would be made abroad, and yet there would be no substantial difference. "I am fully aware," he continued, "that my opinion runs counter to some dicta of the English Judges, and especially to the dictum of L. J. Brett, in *Erishen v.*

“*Last*, which was quoted without disapproval in *Grainger’s* case, and from which it might be inferred” that the making of the contract in England was conclusive to prove the “exercising of a trade” here. Such a view would be destructive of agency business altogether. Again, if a foreign merchant had various agents in the country, which of them would be exercising the trade on his behalf, or would they all be doing it? “An *obiter dicta* which involves “so many difficulties, none of which it was necessary to consider in the case in which it was delivered, humbly appears “to me,” he said, “not to be one which affords any useful “guidance in applying the simple words of the Acts to any “given set of circumstances of an entirely different nature.” As to the question of receipt, the words must mean “*lawfully* in receipt.” The intention of the statute was only to make the agent liable where he had an opportunity of recouping himself. Here he would have no such opportunity—purchasers would no doubt hereafter be notified that documents would not be delivered except against cheques in favour of the company, and the agents would never have any opportunity of so recouping themselves.

Crookston v. Furtado.

“Agent in receipt” or not.

Lord Dundas said that the fact of his agreeing as to there being no “receipt” here rendered it unnecessary to decide the other point, but, as it had been argued, and he disagreed with the other Judges, he stated his opinion upon it. He thought the company did exercise a trade here. Firstly, on the facts, he considered payment was made in Glasgow, receipts being signed “Compagnie des Phosphates du Dyr,

■

**Crookston v.
Furtado.**

**"Agent in
receipt" or
not.**

per Crookston Bros.," and delivered here. Also, he thought the contracts were made here. Crookston Bros. were not mere canvassers for orders which were to be approved or rejected by their principals—they had full authority to sell within limits. He thought that the principle to be deduced from the decided cases was that there was a "trade exercised" here, even if only the contract was concluded here (*Grainger's* case). Lord Watson had stated (apparently with approval) that in *Werle's* case the decision proceeded on that ground, and Cotton, L.J., had expressed a similar view in *Erischen v. Last*. Lord Herschell had also (in *Grainger's* case) quoted a similar expression of Escher, M.R. He (Lord Dundas) thought all this went to the question of the contract being the *conclusive* test. Also, in *Werle's* case, the argument which was expressly rejected was that *only the contract was made here*.

The "receipt" here was not the receipt of the agent. As Lord Escher had said in *Werle's* case, "if the Crown can find such an agent as is described in sec. 41, they can assess him, but, supposing they cannot, they must take such means as they are able to get at the person who should be assessed."

**Last v.
London
Assurance
Corporation.**

**Mode of
computing
profits of
proprietary
life office.**

The question how far the surplus of a proprietary insurance company is assessable has been largely settled in principle by the decision of the House of Lords in *Last v. London Assurance Corporation* (14th July 1885). The London Assurance Corporation is a proprietary office carrying on fire,

life, and marine insurance. Two-thirds of the life "profits" are appropriated to participating policy-holders as bonus.

Last v. London Assurance Corporation.

Mode of computing profits of proprietary life office.

Four questions arose upon the case, viz. :—

- (a) Whether bonuses paid to policy-holders participating in "profits" were "profits" for the purpose of assessment.
- (b) If so, whether the *whole* expenses were a deduction.
- (c) Whether the life profits were to be arrived at by a deduction of payments from premiums received.
- (d) Whether the business was to be assessed *as a whole*.

The Commissioners were of opinion—

- (a) That the bonuses were not "profits."
- (b) That the whole expenses were deductible.
- (c) That the life profits were to be ascertained actuarially; and,
- (d) That the business was to be assessed *as a whole*.

The Crown appealed. In the Queen's Bench Division, Day, J., accepted the view of the Commissioners on all points. He considered that the setting aside of the fund for bonus distribution was a necessary expense of making the income; the fund constituted the sole consideration for the policy-holders paying an increased premium.

Smith, J., agreed with Day, J., on all points, except that as to bonuses. He considered these as part of the "profit." Smith, J. (as junior), withdrew his judgment on this point,

Last v. London Assurance Corporation.

Mode of computing profits of proprietary life office.

and judgment was given accordingly. This was accepted, except so far as it related to the bonuses, and the Crown went to the Court of Appeal on that point. There Brett, M.R., and Cotton, L.J., being of the same opinion as Day, J., the appeal was dismissed, Lindley, L.J., dissenting. The Crown appealed to the House of Lords, where the decision of the other Courts was reversed, Lord Blackburn and Lord Fitzgerald being in favour of the Crown, and Lord Bramwell dissenting very strongly. Lord Blackburn drew a distinction between such a case as this, and one which might arise if a company asked, say, £1 13s. 2d. per cent. from a *non-participating* policy-holder and £1 19s. 10d. from a *participating* policy-holder, on the understanding that if the latter paid premiums for five years the difference (of 6s. 8d.) per cent. per annum, or any part of it, should be returned to him *in any event*. Here the participating policy-holders received a *share of the profit*.

We thus get :—

<i>In favour of the Crown.</i>		<i>Against the Crown.</i>	
Smith, J.	Queen's Bench	Day, J.	
Lindley, L.J. ..	Court of Appeal	{ Brett, M.R. Cotton, L.J.	
Lord Blackburn .. }	House of Lords	Lord Bramwell.	
Lord Fitzgerald .. }			

Equitable Life Assurance Society of U.S. v. Bishop.

This case was followed in *Equitable Life Assurance Society of United States v. Bishop* (Court of Appeal, 8th December 1899).

Last's case. Form agreed upon.

The following is the form of return agreed upon between the Board of Inland Revenue and the London Assurance Company after the decision in 1885. For convenience of

reference we have inserted hypothetical figures. The words *Last's case.*
in italics are also ours :— *Form agreed upon.*

YEAR 1905-6.

YEAR 1902.

Marine Profits, viz., Premiums, less Losses, Commission, and Bad Debts	£100,000
Fire, do., do.	50,000
Life,* do., viz. :	

Surplus at quinquennial valuation on	
<i>31st December 1899—including an</i>	
<i>average of £200,000 taxed and</i>	
<i>£50,000 untaxed Interest</i>	<i>£280,000</i>
<i>Less Balance undivided at previous</i>	
<i>quinquennium (1894)</i>	<i>5,000</i>
	<i>275,000</i>
	<i>One-fifth 55,000</i>
Interest, all except on Life Funds	300,000
Profits on realisation of Securities (except on Life Account included in surplus)	5,000
	£510,000
Deduct expenses of the year	110,000
	£400,000
Net Profit	£400,000
Taxed Interest— <i>Life Account</i>	£200,000
" " <i>Other than Life Account</i>	150,000
	350,000
Amount remaining to be assessed, or amount on which the tax has been overpaid, as the case may be ...	
	£50,000

* All Life Profits.

Profit for the Year 1902	£50,000
" " 1903 (arrived at as above)	20,000
" " 1904 " "	71,000
	3)150,000
Average for 1905-6	£50,000

The practice as to the assessment of Insurance Companies
is discussed later.

New York Life Insurance Co. v. Styles.

The case of *The New York Life Insurance Company v. Styles (Surveyor of Taxes)* is one of the utmost importance to life insurance companies. The facts, according to the case, are as follows :—

Mode of computing profits of mutual life office.

The company is a mutual one, not having any shareholders. The members are policy-holders, and the rate of premiums contributed is such as to leave, at the end of the year, a surplus after payment of expenses. This surplus is partly returned as bonus or in reduction of premiums, and partly carried forward as funds in hand to the credit of the members. The Surveyor contended that this surplus was liable to be assessed as "profits or gains." The Commissioners decided to the contrary, but stated a case for the opinion of the Court. The Queen's Bench Division (Stephens and Wills, J.J.) and the Court of Appeal (Esher, M.R., Fry, and Lopes, L.J.J.) considered the case could not be distinguished from *The London Assurance* case, and they gave judgment for the Crown. The case was ultimately heard in the House of Lords before the Lord Chancellor, Lord Watson, Lord Bramwell, Lord Fitzgerald, Lord Herschell, and Lord Macnaghten. Judgment was delivered on the 1st July 1889, and their Lordships—reversing the decision of the Court below—decided in favour of the appellants. The Lord Chancellor (Lord Halsbury) and Lord Fitzgerald were unable to distinguish the case from that of *Last v. London Assurance Corporation* (p. 98), and considered that the judgment should be affirmed. But the other Judges said that the cases were quite different. The distinction drawn was that the *London Assurance*

Last v. London Assurance Corporation contrasted.

Corporation was a proprietary office, consisting of members and shareholders quite distinct from the insured. Two-thirds of any surplus funds were to be returned to the holders of participating policies who paid a higher premium than those holding non-participating policies. The one-third was admittedly business profit, but it was held that the other two-thirds were none the less profits from the fact of their being returned to the policy-holders. There were two bodies—shareholders and assured. The former had for their object the making of profits in dealing with the latter, and the whole profit so made, whether returned or not, was liable to be assessed. The *New York* case, however, was held by the majority of the Judges to be entirely different, and each one gave a long and exhaustive judgment.

Last v. London Assurance Corporation contrasted.

The judgment of Lord Bramwell perhaps draws the distinction as clearly as possible. After stating the above facts as to the London Assurance Corporation, he proceeded to deal with the position of the members of the New York Company in the following terms :—

“ They are a corporation, but the case may be, as is admitted, dealt with as though they were an unincorporated association of individuals. Take it that they were; take it that half-a-dozen persons so associated themselves together at the beginning of the year; they each put into a common purse £10, to be given to the executors of anyone who dies, or divided, if more than one dies, among the executors of those having died. In fact, no one dies, and the money is returned, or carried on for the next year. Is it possible to say that this is an association for the purpose of profit, or that it has made any profit? ”

*Last v.
London
Assurance
Corporation
contrasted.*

He then went on to say that the business of the New York company was precisely a similar combination on a much larger and more complex scale. He continued :—

“ I am of opinion, then, that as a matter of reasoning, the judgment is wrong. But it is said that we are bound by the authority of *Last v. London Assurance Corporation* to hold otherwise. If I thought that that case decided otherwise, I would abide by it ; it would be my duty to do so, and, I may say, my inclination, for it is much better that a wrong decision should be set right by legislation than that idle distinctions should be made between it and other cases, and the law thrown into confusion.”

We thus get Lord Halsbury, Lord Watson, Lord Herschell, and Lord Macnaghten approving the *London Assurance* case, in addition to the others already stated, which should be sufficient evidence of the case being rightly decided. As to whether the two cases are the same or not, we have—

<i>Considering the cases the same.</i>				<i>Considering the cases different.</i>			
Stephens, J.	..	..	} Queen's Bench.	} Court of Appeal.	} Lord Watson		
Wills, J.	..	..					
Esher, M.R.	..	..					
Fry, L.J.	..	..					
Lopes, L.J.	..	..					
Lord Halsbury ..	..	..	} House of Lords	} Lord Bramwell			
Lord Fitzgerald..	..	..					
					} Lord Herschell		
					} Lord Macnaghten		

It must thus be taken as fully established that—

- (a) A proprietary office is liable to be assessed on all its surplus, whether distributed to policy-holders or not.
- (b) A mutual office is not liable to assessment on its surplus, except so much as arises from transactions with persons who are not members of the society.

For the application of these principles in practice see *post*.

The principle of this decision would appear to apply to all strictly mutual societies, &c., whether registered under the Limited Liability Acts or not. For example, in the case of a club where the revenue exceeds the expenditure, the difference is not assessable. The members have simply subscribed more than is required to pay the expenses and the balance is not "profit."

The principle applies universally in the case of mutual concerns.

In *Hudson's Bay Co., Lim. v. Stevens* (Court of Appeal, 16th and 19th February 1909) the question was as to the liability of the company to assessment in respect of the proceeds of land sold. The gross proceeds of sales in the year were £177,857, and it was impossible to say the cost of such land.

Hudson's Bay Co., Lim. v. Stevens.

Land sales.

The company was incorporated by Royal Charter in 1670. In 1869 they surrendered their rights within Rupert's Land in consideration of £300,000 cash and certain rights to claim grants of land, which rights they have exercised from time to time. It is their regular practice to sell the land, and in 1903 they paid £2 per share out of such proceeds in reduction of capital. No land had ever been bought except under the original Charter, and modifications thereof.

The Crown claimed tax on the *full amount*.

The Court were unanimously in favour of the company.

The Master of the Rolls said :—

"A chartered company is essentially different from a statutory company, and, speaking generally, it occupies a position similar to that of an individual; it can do anything that it is not prohibited from doing. The charter contains no provision as to profits, and I think it is clear that the familiar doctrines as

**Hudson's Bay
Co., Ltd. v.
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Land Sales.

to the distinction between capital and income, and the powers of the directors in paying dividends, had no application to the company." . . . "The real question is whether this money can be regarded as profits or gains derived by the company from carrying on a trade or business. In my opinion it cannot. The company are doing no more than an ordinary landowner does who is minded to sell from time to time, as purchasers offer, portions suitable for building, of an estate which has devolved upon him from his ancestors. I am unable to attach any weight to the circumstance that large sales are made every year. This is not a case where land is from time to time purchased with a view to resale; the company are only getting rid by sale, as fast as they reasonably can, of land which they acquired as part of a consideration for the surrender of their charter."

He did not think the company was carrying on the trade of selling land.

Farwell, L.J., said :—

"It is clear that a man who sells his land, or pictures, or jewels, is not chargeable with income-tax on the purchase-money or on the difference between the amount that he gave and the amount that he received for them. But if instead of dealing with his property as owner he embarks on a trade in which he uses that property for the purposes of his trade, then he becomes liable to pay, not on the excess of sale prices over purchase prices, but on the annual profits or gains arising from such trade, in ascertaining which those prices will no doubt come into consideration." . . . "A landowner in England may establish a game farm on part of his estate, and make profits thereby which would be liable to income-tax, and he may also sell parts of his estate for building purposes, but his trade as a game farmer does not bring his sales as a land owner within the Income Tax Acts; and I see no difference in this respect between his position and that of the company. Again, a landowner may lay out part of his estate with roads and sewers, and sell it in lots for building, but he does this as owner, not as a land speculator. . . . Land-owning is not a trade. . . . The actual claim by the Crown is extravagant. . . . If the company were to be treated as trading they must at least be allowed the price paid for the land."

Kennedy, L.J., gave judgment to the same effect.

A difficult question arises as to the liability to tax of a land development company. It is submitted that such a company must at least be bound by their own accounts, and if they allocate a portion of the proceeds of sales to "Profit and Loss Account" it must be paid upon, even though not distributed. We believe that in some cases nothing is taken to Profit and Loss Account until as much is realised as the entire cost of the land. It is uncertain whether the Crown would consider themselves bound by such an account, but apparently there need not be any objection from their point of view, for, even if they allowed it, they would get tax on all proceeds after that time.

Land Development Company.

Principle of assessment.

The mode of assessment under the fifth case (*i.e.*, on the amount *received in the United Kingdom*) sometimes leads to anomalous results, as an amount received here is not necessarily *profit*. This is emphasised by the statement of a correspondent to the *London Times*, that he has been called on to pay income tax on his share of a sum of £350,000, received from abroad in respect of the *proceeds of the sale* of the Odessa Waterworks, which company was formed about 1870 with a capital of £1,100,000, and has never paid any dividend.

Difficulties in mode of assessment of foreign profits.

The pensions of retired Indian officers when remitted to this country are chargeable with duty, although they have been charged with the income tax of India.

Pensions of retired Indian officers.

Reply of
Chancellor of
Exchequer to
memorial as to
profits taxed
in United
Kingdom as
well as in
Colonies.

In June 1896 the Chancellor of the Exchequer sent the following reply to a memorial of the Royal Colonial Institute, respecting the payment of income tax in the United Kingdom on income earned and taxed as such in other parts of the British Empire :—

Treasury Chambers, May 27 1896.

SIR,—The Chancellor of the Exchequer has laid before the Board of Treasury the memorial which you forwarded to him on the 15th ultimo from the Royal Colonial Institute praying for such an amendment of the law as will exempt from income tax in this country any income which has been remitted from other parts of the British Empire, and which has already paid income tax where it was earned; and their Lordships, after giving the matter their careful consideration, direct me to submit the following observations in reply :—

(1) My Lords are unable to reconcile the proposal before them with the leading principle of the income tax legislation in this country.

The income tax here is, as its name implies, a tax upon income received in the United Kingdom.

In this respect it appears (according to the statements in the memorial) to differ from the income tax established in the Colonies, which extends only to incomes earned in the country where the tax is in force.

In the United Kingdom, however, it is levied without regard to distinctions based upon either the nature or the locality of the property from which the income arises; though it has often been urged that such distinctions might reasonably be held to justify a different treatment.

For example, a person receiving income from realised property is taxed in the same way and at the same rate as a person receiving income from the exercise of a profession.

Similarly, a person receiving income from an industrial business in the Colonies or abroad is taxed in the same way and at the same rate as one receiving income from a similar business in this country.

In short it is the income which is taxed, and not the property or other source from which the income is derived.

Reply of
Chancellor of
Exchequer to
memorial as to
profits taxed
in United
Kingdom as
well as in
Colonies.

As the incomes to which the memorialists refer are received (and, in most cases, spent) in this country, my Lords see no injustice in taxing them in the same way and to the same extent as other incomes subject to the same conditions.

(2) Nor does it appear to them inequitable that a person who possesses property in one country and spends the income derived from it in another should be subject to taxation in both.

Owing to the circumstances of his position he is, *pro tanto*, a citizen of two countries, and requires the protection of two Governments.

My Lords cannot admit that such a person should be exempted from taxation in the country where he spends his income because he has already been taxed in the country whence he derives it.

(3) The contention of the memorialists is limited to incomes derived from the Colonies; but the arguments advanced apply with equal force to incomes derived from foreign countries under similar circumstances.

If it is "oppressive and unjust" to tax income in the country where it is spent, when it has already been taxed in the country whence it is derived, the oppression and the injustice are the same, whether it is derived from a foreign country or a Colony.

(4) My Lords do not wish it to be supposed that in their opinion the Colonies are on the same footing as foreign countries. They recognise with satisfaction the many ties which bind together the different portions of the Empire; but they must remind the memorialists that those ties are not fiscal ties.

The system of taxation, both in this country and in the self-governing Colonies, has always been based on the principle of treating each area as distinct and independent for fiscal purposes; and Parliament has made no concession to the Colonies in such matters which is not equally applicable to foreign countries.

Concessions of this kind have usually been based upon the grant of reciprocal advantages; and it is from this point of view alone that any such measure as that now in question could be justified.

Reply of
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But for this purpose it would be necessary to consider as a whole the fiscal relations and the burdens of the different parts of the Empire.

The point now raised relates only to the income tax; and the memorialists suggest that the principle of reciprocal exemption should be introduced in respect of that source of revenue alone.

But my Lords must point out that the concession is practically all on one side.

The amount of income enjoyed in the United Kingdom from property in the Colonies is far larger than the income enjoyed in the Colonies from property in the United Kingdom; and the loss to the Imperial Exchequer would be much greater than the aggregate gain to the individual taxpayers in this country.

(5) The concession made under sec. 20 of the Finance Act of 1894, to which reference is made in the memorial, does not, in their Lordships' opinion, present a true analogy to the proposal under discussion.

The relief from taxation accorded by that section extended only to the amount of duty which had already been paid under the colonial law, whereas the memorialists claim that the payment of income tax in the Colonies, at however low a rate, should exempt from payment here, at however high a rate the tax may for the time being be fixed.

A further distinction may also be noted. The income which it is desired to relieve from taxation is received and spent in this country.

The colonial property which (except for sec. 20) might be taxed under the Finance Act is actually situated in the Colonies, though it is constructively in this country through the operation of a rule of law.

(6) The proposed exemption could not be limited to colonists resident in this country, but must be extended to all persons drawing any part of their incomes from property in the Colonies.

The loss to the Imperial revenue which the proposal would involve is estimated at not less than £500,000. A loss of so large an amount to the Imperial revenue raises very serious practical considerations, which applied hardly at all to the case of the con-

cession made in the Finance Act of 1894. The loss would have to be made good, and it could only be made good by the imposition of other taxes. But my Lords would feel great difficulty in asking Parliament to increase the burden on the general body of the taxpayers in this country merely because some of their number draw their incomes from property situated in the Colonies.

**Reply of
Chancellor of
Exchequer to
memorial as to
profits taxed
in United
Kingdom as
well as in
Colonies.**

(7) Finally, I am to point out that the benefits which would accrue from the proposed exemption would be very unequally distributed.

It would apply only to incomes coming from Colonies in which an income tax was levied.

It must, however, be assumed that, in Colonies where there is no income tax, the burden of taxation, both on property and on individuals, is substantially the same as in Colonies where there is such a tax.

But under the proposal it is the latter class alone which would benefit.

In the other Colonies the income remitted to this country, though not liable to colonial income tax, would nevertheless have paid its due share of colonial taxation in some other form, but would obtain no relief here. The injustice, if any, of the present system would only be replaced by another.

For the reasons above set forth my Lords regret that they are unable to accept the suggestion made by the memorialists.

I am, Sir, your obedient servant,

FRANCIS MOWATT.

The Secretary, Royal Colonial Institute, Northumberland Avenue.

In June 1898 this subject was again brought before the Chancellor of the Exchequer by the Royal Colonial Institute, but the Chancellor replied that "he had nothing to add to the views expressed in his letter of 27th May 1896."

**Premiums on
shares issued.**

Premiums received by a company on an issue of shares, &c., are not profits liable to tax within the meaning of the Acts.

A case has come under our notice where the Surveyor made a claim for tax on such premiums, which was, however, ultimately withdrawn. It is difficult to see how such a claim can be seriously entertained, and we have not heard of such a one before. If such sums were held to be liable, a railway company would have to pay heavily on the issue of their stock. It is almost sufficient answer to such a case to point out that a company who wish to raise £1,000,000, and who issued £1,000,000 3 per cent. stock at par would not have to pay any tax, but if they decided to issue £666,666 4½ per cent. stock at 150—precisely the same thing to them—they would have to pay tax on £333,333.

**Voluntary
gifts.**

A voluntary gift, *e.g.*, an allowance by a father to his son, would not be assessable (see also cases quoted in Chapter V.).

**Dividends on
Government
securities
under 50s. per
half-year.**

Though dividends on Government securities, &c., are chargeable under Schedule C, yet where the amount of the dividend, &c., is less than £2 10s. per half-year, they are not so chargeable, but are paid to the stockholder in full, and are to be returned, if he or she be liable to tax, under Schedule D (1842, sec. 95). (A similar provision is contained in the Finance Act 1894, in respect of interest on Savings Bank deposits, whatever be the amount of the interest.) In

the case, however, of National Debt Certificate Coupons, tax will have been deducted, though the amount of the coupon is less than £2 10s. per half-year (National Debt Act 1870), and therefore this will not have to be returned for assessment.

Where lands, occupied by a cattle dealer or dairyman, have been assessed or charged on the rent or annual value, and it is found that the lands are not sufficient for the keep and sustenance of the cattle brought on the said lands, so that the annual value does not afford a just estimate of the profits of such person, he is to be charged on his actual profits on a three years' average (or as the case may be) as in the case of a trader (1842, sec. 100. Schedule D, Case III., Rule 3). The case of *Brown v. Walsh*, which arose on a question of fact as to whether Mr. Brown was or was not a "dealer," and which was taken up by the National Sheep-breeders' Association, is fully stated in an appendix to the fourth edition.

**Lands
occupied
by cattle
dealer, &c.**

The duty on interest arising from such foreign and colonial securities as are not included under Schedule C—*e.g.*, interest received from abroad without deduction of tax—is to be computed on the full amount received, or to be received, in the United Kingdom in the current year, without any deduction (1842, sec. 100. Schedule D, Case IV.).

**Foreign and
Colonial
securities.**

The duty in respect of foreign and colonial possessions is payable on the amount received in the United Kingdom, calculated on the average of the three preceding years, and, generally, in the same manner as in the case of a trader (1842,

**Foreign and
Colonial
possessions.**

sec. 100, Schedule D, Case V.). As to the interpretation put upon the word “possessions,” see the case of *Colquhoun v. Brooks* (p. 75).

**Sweeping
clause in
Schedule D.**

The intention of the Legislature being to tax all income received in the United Kingdom, there is a sweeping clause in the Act of 1842 (sec. 100, Schedule D, Case VI.), providing for charging any annual profits or gains not falling under any of the previous rules or under any other schedule. The nature of the profits and the manner in which they have been computed are to be stated to the Commissioners, who may direct in what manner the annual value is to be arrived at.

Infants.

The parents or guardians of an infant are chargeable in respect of profits accruing to him during his minority (1842, secs. 41 and 173; 1880, sec. 92).

**Deceased
persons.**

The executors or administrator of a deceased person are chargeable in respect of profits accruing to such person (1842, sec. 173; 1880, sec. 92).

An assessment in respect of unreturned profits may be made upon the representatives within three years of the expiration of the year of assessment (1907, sec. 23), but subject to the previous limitation in respect of any year prior to 1907-8.

**Persons
abroad.**

In the case of a person not residing in the United Kingdom an assessment may be made, in respect of his profits, upon his agent here (1842, sec. 41).

A *dealer* in stocks and shares is liable to assessment in respect of profits on his transactions, but a profit or loss on a casual change of investment is an increase or decrease of capital, and should not be taken into account (see *Californian Copper Syndicate* case, p. 74), and so far as we are able to ascertain it would appear that the result of habitual speculations in stocks and shares must be disregarded for income tax purposes.

Dealer in stocks.

Casual profit on change of investment.

Speculation.

As to whether surplus or deficiency on sale of investments, or buildings held by a financial company, is profit or loss for income tax purposes, see *post*.

Sale of investments in case of financial company.

Where a manufacturer goes outside his business, and (say) invents a machine, which he patents and then sells the patent rights, the profit would not be assessable.

Sale of patent rights.

Attempts are sometimes made to assess the profit on promotion of a single company, but they are not usually pressed where it appears that the profit is clearly casual and not recurring.

Promotion profits.

In the case of a syndicate, or of a property, &c., company, formed to hold shares of subsidiary companies, and whose Profit and Loss Account might be as follows :—

Property, &c., company, and directors' fees.

£	£
To Office Expenses, Directors' Fees, &c. .. 200	By Dividends or Rents received .. £2,000
„ Balance 1,745	Less Income Tax .. 100
	1,900
	„ Transfer Fees .. 25
	„ Bank and other Interest .. 20
£1,945	£1,945

the directors’ fees would be assessable in the hands of the directors, and the company would only be liable for tax on interest (*post*). It has been suggested that as the fees to directors are paid out of taxed income they should not be again assessed. It is held, however—and rightly so, we would submit—that they are chargeable as income *of the directors*.

“Paper”
profits.

In the case of (say) a financial company having paper profits—*i.e.*, having shares allotted to them instead of being paid in cash—the principle of assessment is as follows :—

- (a) If the shares are retained, to assess the estimated value of them. If that is objected to, to omit the shares altogether, and the company to give an undertaking to account for them as and when sold for three years, the remainder (if any) to be valued at the end of the three years.
- (b) If the shares have been distributed, to take the average Stock Exchange quotation during the following month.

Duncan v.
Farmer.

Grant from
Aged Ministers’
Fund.

In *Duncan’s Executors v. Farmer* (Court of Session, Scotland, 18th March and 18th June 1909) the executors appealed against an assessment on £100, a grant made to the deceased by the Committee of the Aged and Infirm Ministers’ Fund of the Church of Scotland. The grant had been made to Mr. Duncan on his retiring from his living on account of ill-health. The income of the Fund is exempt from income tax (1842, sec. 105).

The executors contended that the grant was a voluntary gift; the Surveyor, that it was either (1) a profit under Schedule E by virtue of his having been a minister, or (2) an annuity.

Duncan v. Farmer.

Grant from Aged Ministers' Fund.

The Court held that the amount was taxable under Schedule D as an annuity. It clearly could not be in respect of his office (under Schedule E), when the whole reason for his receiving it was that he was no longer in office. But, equally clearly, it could not escape either as a charity (section 105 applying only to the funds when *in the hands of the institution*) or as being paid out of taxed income (1853, sec. 40), the interest not being taxed. The Lord President said that the distinction between the case and *Turner v. Cuxson* (p. 50) was that in that case the payment was a mere donation, here it was a regularly constituted annuity.

It is sometimes felt to be an unfair advantage to co-operative societies that they are not assessed to income tax, but this is not so. The reason is very clearly stated by the Chancellor of the Exchequer in a Parliamentary paper in August 1904 as follows :—

Co-operative Societies. Why not assessed.

“There is no exemption from income tax granted, as is popularly supposed, to co-operative societies or their members. In only one respect does the position with regard to the tax differ from that of the ordinary society or company. The ordinary society or company deducts income tax from the member's or shareholder's dividend before it is paid over to him, leaving it to him either to bear the tax or to re-claim the amount deducted from the Inland Revenue authorities, if his income falls within the limit of exemption. In the case of co-operative societies most of the members are working men whose incomes fall within the limit. Accordingly, to deduct income

Co-operative
Societies.
Why not
assessed.

tax in their cases from the dividend before paying it over would involve nearly all the members claiming repayment. Nothing would be gained to the revenue, and infinite annoyance and trouble would be given both to those who had to make the claim and to the Revenue officials in dealing with the enormous number of claims so made. It is therefore provided that if certain conditions are satisfied income tax need not be deducted from the profits of co-operative societies before their distribution as dividends to individual members. No exemption, however, is given, as every individual member whose income is above the exemption line is liable to the tax on his share of those profits when received by him. The Army and Navy Co-operative Society, Lim., and Civil Service Co-operative Society, Lim., do not fulfil the necessary conditions, and are therefore directly assessed to the income tax."

This statement was confirmed and elaborated in the Report of the Committee which sat in 1904, who were instructed *inter alia* "To inquire and report whether co-operative societies enjoy under the present law any undue exemption from liability to income-tax."

CHAPTER VI.—(*continued*).

SCHEDULE D (*continued*).

PART II.—*Returns for Assessment.*

THE Form of Return (No. 11), issued by the assessors, **Form of
Return No. 11.** contains a list of the various descriptions of income to be returned for assessment under Schedule D. The following is from the form and instructions issued for the year 1911-12, and for convenience of reference we have noted the sections of the Act in each paragraph.

Form of
return No. 11.

Reference to enclosed Sheet of Notes, Explanations, and Instructions.	STATEMENT OF INCOME FOR ASSESSMENT UNDER SCHEDULE D.	AMOUNT.		
		£	s	d
Insert "average" profits. See Note 5. (1892, Sec. 100, 1st case.) (1892, Sec. 100, 2nd case.)	FROM TRADE, PROFESSION, EMPLOYMENT, OR VOCATION, viz. :— The Trade, Profession, or Business of..... carried on by..... at..... The Employment or Vocation of..... carried on by me at.....			
Insert profits of the preceding year. See Note 6. (1892, Sec. 100, 3rd case.)	FROM BANK INTEREST OR OTHER INTEREST OF MONEY NOT TAXED BY DEDUCTION AND FROM DISCOUNTS, viz. :— Particular source of such Income.....			
Insert amount received or to be received in the United Kingdom in the current year. See Note 7.	FROM COLONIAL AND FOREIGN SECURITIES (where the duty is not deducted by the Agent entrusted with payment thereof), viz. :— Interest of Money, Annuities or other Annual Payments arising from Railways out of the United Kingdom..... Interest of Money, Annuities or other Annual Payments derived from Property out of the United Kingdom other than Railways..... Interest arising from Securities of Indian or Colonial Governments or Companies..... Interest arising from Foreign Securities.....			
Insert "average" of receipts in the United Kingdom. See Note 8.	FROM COLONIAL AND FOREIGN POSSESSIONS, viz. :— Possessions in any of His Majesty's Dominions out of the United Kingdom..... Possessions in Foreign Countries.....			

FROM PROPERTY OR PROFITS NOT FALLING UNDER ANY OF THE FOREGOING HEADS, viz. :—	
Letting Furnished House at..... (1895 Sec. 100, probably 8th case.)	
Other Sources (the particular source to be stated), viz. :—	
.....	
the amount whereof is computed according to (a).....	
.....	
TOTAL..	
Less : Amount claimed for Wear and Tear of Machinery and Plant } which should not be deducted in arriving at the above figures }	
NET TOTAL..	

General Declaration.—I declare that in the foregoing statement I have given a full and true Return of the whole of the Income chargeable upon me under Schedule D of the Income Tax Acts, estimated to the best of my judgment and belief according to the directions and rules of the said Acts.

I desire to be assessed by the.....day of.....19....
 Given under my hand this.....
Signature.
Business Address.

Private Residence.

Note.—A woman must state after her signature whether Married, if widow or Spinster

STATE WHETHER THE RETURN IS MADE—
 1. On your own behalf;
 2. As precedent Acting Partner of a Firm;
 3. As Trustee, Agent, Receiver or Factor, and for whom;
 or, 4. As the Officer of any Corporation or Company.

Insert profits of preceding year when amount is fixed and certain; but when amount is fluctuating and uncertain, insert average profits. See Note 9.

(a) State the grounds of computation, and whether on an average or not.

See Note 11.

See Note 12.

See Note 13.

See Note 14.

Form of return No. 11.

Form of
return No. 11.

Reference to enclosed Sheet of Notes, Explanations, and Instructions.	Declaration D. .. DECLARATION by the precedent Acting Partner of a Firm (or by the Agent, if none of the Partners is resident in the United Kingdom).	
	1. Full description or style of the Firm*,..... 2. Place or places of carrying on the Concern*..... (The addresses of all places of business, the profits of which are included in the Return, should be entered).	
*See Note 24.	3. Particulars of all annuities, interest on loans, and other annual charges (excluding life assurance premiums) payable out of the profits or gains. (Interest on partners' own capital and salaries of partners are not to be included here but under head (4).)	
	Persons to whom payable	
	Name	Address
	Amount payable for the current year	
	£	

If there are no Charges, the word "NONE" should be inserted here. It is not sufficient to leave this space blank.

4. Particulars of the share of each partner in the total profits of the Firm entered on page 2, after deducting the amount of the payments included under head (3) of this Declaration.

Names of the Partners.*	Residences of the Partners*	Whether a "Sleeping" or an "Acting" Partner.	Amount of each Partner's share of the Profits	Basis of Distribution of Profits under Partnership
			£	

I declare that I am†.....of the Firm above described, and that the foregoing particulars are in every respect fully and truly stated according to the best of my judgment and belief.

Dated this.....day of.....191 ..

† State whether precedent acting partner, or agent. Signature.

The object of this declaration is *inter alia* to obtain particulars of interest payable (particularly on loans on personal security), in order that the same may be charged at 1s. 2d. instead of at 9d.

Form of
return No. 11.

Form of
return No. 11.

NOTES, EXPLANATIONS, AND INSTRUCTIONS IN REGARD TO THE
INCOME TAX FORM OF RETURN, NO. 11.

(1). *Persons liable to Assessment to Income Tax.*

All persons resident in the United Kingdom, whether subjects of His Majesty or not, are liable to Assessment; and also all persons not resident within the United Kingdom (whether subjects of His Majesty or not) in so far as they derive Income from property, trade, or employment in the United Kingdom.

(2). *Income to be entered on Form No. 11.*

The Income to be entered in the Statement on page 2 of Form No. 11 is specified below, and is confined to Income not already taxed by deduction; but when Exemption, Abatement, or Relief in respect of Earned Income is claimed, the total Income from all sources (whether taxed or not) must be entered on page 3 of the form, according to the instructions given below.

(3). *Income to be entered on page 2 of Form No. 11.*

The Income to be entered on page 2 of Form No. 11 is all such Income as is assessable under Schedule D, that is:—

- (i.) Profits of Trade, Profession, Employment, or Vocation.
- (ii.) Profits from Discounts and Interest of Money not taxed by deduction.
- (iii.) Profits from Colonial and Foreign Securities, where the duty is not deducted by the agent entrusted with the payment thereof.
- (iv.) Profits from Colonial and Foreign Possessions.
- (v.) Property or Profits not coming under any of the foregoing heads, or of those enumerated below.

(4). *Income not to be entered on page 2 of Form No. 11.*

Income falling under any of the following heads should not be entered on page 2 of Form No. 11, viz.:—

- (i.) Income arising within the United Kingdom from the ownership of Land, Houses, or Buildings, or from the occupation of Land.

(ii.) Income derived from the salary or emoluments of any office or employment in the public service, or under any public body (corporate or not corporate), or from any annuity, pension, or stipend payable out of public revenues of the United Kingdom.*

(iii.) Income arising within the United Kingdom from the profits, rents, or annual value of Quarries, Mines, Iron Works, Gas Works, Salt Springs or Works, Alum Mines or Works, Water Works, Streams of Water, Canals, Inland Navigations, Docks, Drains and Levels, Fishings, Rights of Markets and Fairs, Tolls, Bridges, Ferries, Cemeteries, and other concerns of the like nature.*

[*Special forms are provided for the return of Income falling under these heads, and will be supplied on application to the Assessor or Surveyor of Taxes.]

(iv.) Income from which Tax has been deducted upon payment to the recipient.

The following are the classes of Income upon which Tax is commonly deducted before the Income reaches the recipient, viz.: Income from the Public Funds, from Loans to Corporations or to Colonial and Foreign Governments, from Interest on Mortgage of property in the United Kingdom, and from Dividends paid out of the profits of Companies carrying on business in the United Kingdom.

(5. Profits of Trade, Profession, Employment, or Vocation.

Where Income is derived from the exercise of any business, profession or employment, attention is particularly directed to the fact that the amount of Income to be returned for assessment in any given year is neither the actual Income of that year, nor the Income which a person expects to make in that year, but is a "statutory" Income, of which the amount is to be computed from actual ascertained figures. These are the figures shown by the accounts of the business or profession for the three years immediately preceding the year for which a return has to be made, and the computation from them is to be made according to prescribed rules, of which the following is an abstract:—

RULES AND REGULATIONS FOR CALCULATING PROFITS.

The Tax extends to the Profits of all Trades, &c., carried on or exercised in the United Kingdom by any Person whatsoever, whether a subject of His Majesty or not, and wheresoever residing; and also to the Profits of Trades carried on or exercised elsewhere than in the United Kingdom, if carried on or exercised by Persons residing in the United Kingdom. (1853, sec. 2.)

Form of
return No. 11.

Average.—The amount of Profits is to be computed on an Average of the Three preceding years, ending either on the date, prior to the 5th day of April 1911, to which the Annual Accounts have been usually made up, or on the 5th day of April 1911 ;

Or, if the Trade, &c., has been set up or commenced within three years, on an average from the period of commencing the same ;

Or, if commenced within the year of Assessment, the Profits are to be estimated according to the best of your knowledge and belief, and the grounds on which the amount shall have been estimated should be stated for the information of the Commissioners. (1842, sec. 100.)

In computing the Profits upon which the average is to be taken—
Deductions are allowed—

- For Repairs of Premises occupied for the purpose of the Trade, &c., and for the Supply or Repair of Implements, Utensils, or Articles employed, not exceeding the sum usually expended for such purposes according to the average of the three years preceding. (1842, sec. 100.)
- „ Debts proved to be bad (1842, sec. 100) ; also for Doubtful Debts according to their Estimated Value. (1853, sec. 50.)
- „ the Rent of Premises used *solely* for the purposes of business, and not as a place of residence. (1842, sec. 100.)
- „ a proportion, not exceeding two-thirds, of the Rent of any dwelling-house *partly* used for the purposes of business. (1842, secs. 100 and 101.)
- „ the Annual Value of any premises occupied by the Owner *solely* for the purposes of business, and not as a place of residence, according to the amount on which duty has been paid under Schedule A (1842, sec. 100) ; less ground rent, if any.
- „ a proportion, not exceeding two-thirds, of the Annual Value (according to the amount on which Duty has been paid under Schedule A—less ground rent, if any) of any dwelling-house occupied by the Owner and *partly* used for the purposes of business. (1842, sec. 101.)
- „ any other disbursements or expenses wholly and exclusively laid out for the purposes of the Trade, &c. (1842, sec. 100.)

*No Deductions are allowed—*Form of
return No. 11.

For any Interest on Capital, for any Annual Interest, Annuity, or other Annual Payment, payable out of the Profits or Gains, or for any Royalty or other sum paid in respect of the user of a Patent. (The duty on such Interest, Patent Royalty, or other Annual Payment should be deducted from the person to whom the payment is made.) (1842, sec. 100.)

„ any Sums paid as Salaries to Partners, or for Drawings by Partners.

„ any Sums invested or employed as Capital in the Trade or Business, or on account of Capital withdrawn therefrom. (1842, sec. 100.)

„ any Sums expended in Improvement of Premises or written off for Depreciation of Land, Buildings, or Leases.

„ any Loss not connected with, or arising out of the Trade, &c. (1842, sec. 100.)

„ any Expenses of Maintenance of the Persons assessable, their Families, or Private Establishments. (1842, sec. 100.)

„ any Loss recoverable under an Insurance or Contract of Indemnity. (1842, sec. 100.)

„ any Sum paid as Income Tax on Profits or Gains, or on the Annual Value of Trade Premises.

„ any Premium for Life Assurance, or for Wear and Tear of Machinery or Plant; but Allowances may be Claimed in respect of these items, *see page 2* of the Form No. 11, and Notes (11) and (15) below. (Acts of 1853 and 1878.)

(6). *Profits from Discounts, and Interest of Money not taxed by deduction.*

Under this head fall all Discounts and untaxed Interest received or credited, including Interest on Banking Account or Deposits, and also Dividends in the Public Funds of which the half-yearly amount is less than fifty shillings, where such Dividends are not payable upon Coupons annexed to Stock Certificates payable to bearer. (1842, sec. 95.)

**Form of
return No. 11.***(7). Profits from Colonial and Foreign Securities.*

If received through an Agent who deducts British Income Tax on payment of the Income, these profits should not be entered on page 2 of the Form No. 11. But if British Income Tax is not so deducted the amount received in the United Kingdom must be returned for assessment. (1842, sec. 100, 4th case.)

(8). Profits from Colonial and Foreign Possessions.

Average.—The amount to be returned is the full annual amount received in the United Kingdom on the average of the three preceding years, without any deduction. (1842, sec. 100, 5th case.)

(9). Income from Property or Profits not falling under any of the foregoing heads.

Under this head fall all annual profits or gains not included under any of the foregoing heads and not charged under any other schedule. (1842, sec. 100, 6th case.)

(10). Date to which Profits are to be computed.

In the cases mentioned on page 2 of Form No. 11 where the profits of "the preceding year" are to be taken as determining the amount of the income to be assessed, the year to be taken is strictly speaking the year ended on the preceding 5th April: but in practice it is usually the last calendar year, or the last year to the date at which it is the custom of the taxpayer to make up his accounts. Similarly, where "the current year" is to be taken, this should in strictness be the current Income Tax year to 5th April following: but in practice it is usual to take the current calendar year.

(11). Wear and Tear of Machinery and Plant.

An allowance for diminished value of Machinery and Plant by reason of Wear and Tear may be claimed where the Machinery or Plant belongs to the trader, or is so let to him that he is bound to maintain and deliver it over in good condition.

Where rent is paid for the use of Machinery or Plant, and the burden of maintaining and restoring it falls upon the Lessor, no deduction for Wear and Tear is allowable to the Lessee. (Act of 1878.)

*(12). Mode of Assessment.***Form of
return No. 11.**

Persons assessable to Income Tax under Schedule D may elect to be assessed either by the Commissioners of their District under a number or letter, or by the Special Commissioners of Income Tax. In the absence of election, they will be assessed in the usual course by the Commissioners of their District.

Persons who desire to select one of the two alternatives named above should give notice to that effect in the manner provided for on page 2 of the Form No. 11.

Returns for Assessment by the District Commissioners under a number or letter should be sent to the Clerk to the Commissioners, whose address will be furnished by the Assessor or Surveyor of Taxes on application. Returns for Assessment by the Special Commissioners should be sent to the Surveyor of Taxes under cover, marked "For Special Assessment." In other cases the form should be returned to the Assessor or Surveyor by whom it was issued. The form should be filled up before transmission in all cases.

(13). Income of Married Women.

The income of a married woman living with her husband is, by the Income Tax Acts, deemed to be the husband's Income, and should be returned by the husband on Form No. 11. The only exception to this rule is where a wife earns an income independently of her husband by the exercise of her own personal labour, and the joint income of husband and wife does not exceed £500. In such a case the profit so earned by the wife may be treated as a separate income, for the purpose of claiming exemption or abatement (see Note (16) below).

(14). On whose behalf Return made.

If the Return is made on behalf of a Firm, Declaration (D) on page 4 of Form No. 11 should always be filled up as far as it is applicable (see Note 24), and if any of the individual partners desire to claim Exemption, Abatement, or the Relief allowed in respect of Earned Income (see Note (16) below), application should be made to the Assessor or Surveyor of Taxes for any additional forms required.

Form of
return No. 11.

(15). *Allowance in respect of Life Assurance Premiums.*

The Allowance is authorised only in respect of Premiums paid on the Claimant's own Life or on that of his Wife; it is limited to an expenditure on Annual Premiums not exceeding one-sixth of the Claimant's net personal Income from all sources, and is not admissible as a deduction in arriving at the total Income for the purpose of a claim for Exemption, Abatement, Allowance for Children, or Relief in respect of "Earned Income." In order that the Allowance may be granted in respect of such Premiums it is necessary that the particulars indicated on page 2 of Form No. 11 should be stated, and that the Receipts for the Premiums should, if required, be transmitted to the Surveyor of Taxes.

(16). *Exemption, Abatement, and Relief in respect of Earned Income.*

Total Exemption may be claimed when the Income *from all sources* does not exceed £160 per annum.

Abatement of £160 may be claimed when the Income *from all sources* exceeds £160, but does not exceed £400.

Abatement of £150 may be claimed when the Income *from all sources* exceeds £400, but does not exceed £500.

Abatement of £120 may be claimed when the Income *from all sources* exceeds £500, but does not exceed £600.

Abatement of £70 may be claimed when the Income *from all sources* exceeds £600, but does not exceed £700.

When the Income *from all sources* does not exceed £3,000, and any part of that Income is Earned Income, a Claim may be made for reduction of the Income Tax on the Earned Income to the lower rate applicable thereto. In order to obtain this relief a Claim must be preferred at the time the Return is made, and must in any case be preferred before 30th September in the year for which the tax is charged.

Note.—No Exemption, Abatement, or Relief in respect of Earned Income is given unless the individual is resident in the United Kingdom, except in the case of persons who are or have been employed in the service of the Crown or of any missionary society abroad or of any of the Native States under the protectorate of the British Crown, or who are resident in the Isle of Man or Channel Islands, or who satisfy the Commissioners of Inland Revenue that they are resident abroad for the sake of health.

(17). *Income to be entered on page 3 of Form No. 11.*

Form of
return No. 11.

In order to obtain Exemption, Abatement, or Relief in respect of Earned Income, the Claimant must fill up page 3 (as well as page 2) of Form No. 11, setting forth every source of his Income, including, if married, that of his wife (see Note (13) above), with the amount derived from each source, whether returned for assessment elsewhere or not, and whether tax has already been paid on the Income or not.

The object of this requirement is to ascertain whether the total Income falls within the prescribed limits of Exemption, Abatement, or other Relief. Taxed Income included in a statement of total Income will not be assessed a second time by reason of its being entered on page 3 of Form No. 11.

(18). *Income from Trade, Profession, Employment, or Vocation.*

(a) An individual who has made a Return on page 2 of Form No. 11 on his own behalf should carry to page 3 the Income from this source as entered on page 2, less the deduction (if any) for Wear and Tear.

(b) A partner in a firm should enter on page 3 his individual share of the partnership profits, calculated as follows:—From the average profits of the Firm returned for Assessment, the amount of any Annuities, Interest, and other annual charges payable for the current year, other than Interest on partner's capital, should be deducted. The balance then remaining should be divided according to the terms of the partnership agreement, and the individual partner's share of that balance, for the current year, is the amount to be entered on page 3 of Form No. 11.

When several partners desire to make claims, a separate form must be used by each.

(19). *Income from any Public Office or Employment.*

Income from any Public Office or Employment is taxable under Schedule E of the Income Tax Acts, but should be included in the statement of total Income entered on page 3 of Form No. 11.

(20). *Income from Property.*

If any of the total Income arises from the ownership of Land, Tenements, or Hereditaments, state the precise situation of each Property, with the name of the occupier, and the rent or annual value, including in the statement particulars of any house, land,

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return No. 11.

or other property in the claimant's own occupation, whether belonging to himself or his wife. If ground rent, mortgage interest, or other annual charge is payable on any of the property, particulars thereof must be stated in space No. 2 on page 3 of Form No. 11.

(21). *Income from the Occupation of Land.*

Profits from the occupation of Land are to be taken at one-third of the full annual value inclusive of Tithe.

(22). *Income from Interest, Annuities, Dividends, and Miscellaneous Sources.*

In the case of Income from Annuities, Interest of Money, or other sources not coming under any of the foregoing heads, state fully the particulars. State also in regard to each item under this head whether it has been subjected to Income Tax before receipt. The amount to be entered is the gross amount, and not the net amount received after deduction of the tax.

(23). *Charges on Income.*

Particulars must be given in space No. 2 on page 3 of Form No. 11 of all deductions from the income, such as *Ground Rent, Interest on Mortgage or Loan (whether secured on Property, Life Assurance Policy, Reversion, or otherwise), Annuities, Patent Royalties, or other Annual Payments* from which the taxpayer is entitled to deduct tax, but excluding Life Assurance Premiums, which should be entered in Claim (B) on page 2. If there are no such deductions the word "None" should be inserted. It is not sufficient to leave the space blank.

(24). *Declarations on page 4 of Form No. 11.*

Declaration (D).—The Precedent Acting Partner of every Firm is required to fill up the spaces marked (*) and to sign the Declaration. It is unnecessary to fill up the remaining spaces unless individual partners claim Exemption, Abatement, or Relief in respect of Earned Income.

Declaration (E) should be filled up when applicable (*i.e.*, when there is more than one place of business). The object of this Declaration is to obtain information which will prevent the making of two assessments upon the same source of Income.

There is not any express provision in the Acts as to depreciation of land, buildings, or leases; these, however, would be looked upon as a loss of capital; partners' salaries are obviously payments out of profit after the profit has been ascertained.

Various deductions.

The disallowance of income tax itself is not so obvious. It appears to be an ordinary business charge, and, as such, deductible. An allowance of it, however, to a business man would naturally involve a like allowance to a salaried individual, and would produce the rather curious result that a person in a situation at about an abatement limit (say) £720 per annum, would have to make a mathematical calculation to ascertain whether or not he was entitled to a certain abatement. There is also an express provision in sec. 159 of the Act of 1842 that it shall not be lawful "to make any other deductions therefrom (*i.e.*, from the profit) than such as are expressly enumerated in this Act."

It is the practice to allow deduction in respect of fire insurance and local rates on business premises.

The form is sent out by the assessor at the commencement of the income tax year (5th April) to all persons whom he considers liable to pay income tax (1842, sec. 48). It is to be filled up and forwarded to the surveyor or assessor (1842, sec. 52) within twenty-one days from the date it bears, under a penalty of twenty pounds, and treble duty if the person making default is sued before the Commissioners for the district, or fifty pounds if sued in any of His Majesty's Courts (1842, sec. 55).

Sent out by assessor.

When to be returned.

The form is to be filled up and returned whether the person is or is not liable to tax, and the penalty is exigible in either case; but if such person proves that he is not chargeable, the penalty is not to exceed £5 for any one offence (Finance Act 1907, sec. 22).

Penalty for non-return.

Penalty for non-return.

This section is as follows :—

(1) Every person upon whom notice is served in manner prescribed by section 48 of the Income Tax Act 1842 (which relates to the delivery of notices by assessors), requiring him to make a return of any profits, gains, or income in respect of which he is chargeable with duty under Schedule D or Schedule E in the Income Tax Act 1853, shall make a return in the form required by the notice, whether he is or is not chargeable with duty, and in default shall be liable to a penalty under section 55 of the Income Tax Act 1842 accordingly :

Provided that a penalty inflicted in the case of a person proceeded against for not complying with this provision, who proves that he was not chargeable to duties, shall not exceed five pounds for any one offence.

(2) The duties imposed on officers of any corporation, company, fraternity, fellowship, or society by sections 40 and 54 of The Income Tax Act 1842, and by section 18 of the Customs and Inland Revenue Act 1879, shall, in the case of any company, be performed by the secretary of the company or other officer (by whatever name called) performing the duties of secretary.

Lord Advocate v. Gibb.

Underwriters to return profits paid to clients.

In *Lord Advocate v. Hugh Gibb* (Court of Session, Scotland, 7th June 1906) it was held that underwriters transacting business on behalf of clients were bound to deliver a list (under sec. 51) of the names and addresses of the clients, and also of the profits paid to each of them.

Taxes Management Act 1880, Sec. 21.

By sec. 21 of the Taxes Management Act 1880, it is provided :—

Penalties.

Sub-sec. (3) All penalties exceeding £20 imposed by virtue of this Act, the Tax Acts, or Land Tax Acts, excepting such as are directed to be added to the assessments, shall be recoverable in the High Court.

Sub-sec. (4) In default of prosecution within the space of twelve months from the time of any penalty being incurred under the provisions of this Act, or of the said Acts, no penalty or forfeiture shall afterwards be recoverable in any other manner. **Penalties.**

In *Lord Advocate v. Sawers* (Court of Session, Scotland, 22nd October and 3rd December 1897, and 4th January 1898) it was held that the words in sub-sec. 4 of sec. 21 of the Taxes Management Act 1880 (above) mean that in default of prosecution within twelve months no penalty or forfeiture shall be recoverable in any other manner than before the High Court. It was further held that the Inland Revenue Regulation Act 1890 applies to income tax, and consequently, under sec. 22, sub-sec. (2), of that Act, proceedings for fines or penalties may be commenced within two years after such fine or penalty is incurred; that sec. 55 of the 1842 Act means that the penalty is incurred if there is a failure to deliver the kind of statement required by sec. 52, either by not delivering any statement or by delivering one which is untrue or incorrect. **Lord Advocate v. Sawers.**

Now, however, see Finance Act 1907.

In *Attorney-General v. Till* the facts were that by a deed of June 1899 Mrs. Coombs assigned to Mr. Till, in consideration of £200 per annum for 15 years, the goodwill of her late husband's practice as a solicitor. In 1901 Mr. Till married Mrs. Coombs. Before his marriage Mr. Till deducted the annuity from his profits for income tax purposes, but Mrs. **A.-G. v. Till.**
Inaccurate return.

Penalties.***A.-G. v. Till.*****Inaccurate
return.**

Coombs herself paid the tax, so there was no loss sustained by the Revenue. For 1901-2 and 1902-3 he again deducted the annuity, but it was added by the Commissioners. For 1903-4, 1904-5, and 1905-6 he again deducted it. On inquiry by the local Surveyor Mr. Till replied that he had made a deduction "for interest on capital. An annuity of "£200 to Mrs. Till, my wife, on which income tax is assessed and paid by her." This was incorrect. In April 1907 proceedings were instituted for penalties under sec. 55, the return having been made 20th May 1905. On trial of the action before a special jury, they found that the mistake was made by the defendant's negligence. No fraud was suggested. The question, therefore, was whether a person who had delivered a statement of his income chargeable with income tax which, through negligence or carelessness but without fraud, was incorrect, was liable to the penalty.

Following *Lord Advocate v. Sawers*, and expressing his own concurrence with the views expressed, Lord Chief Justice Alverstone gave judgment for the Crown for £50 and costs.

In the Court of Appeal this judgment was reversed.

***Cozens-
Hardy, M.R.***

Cozens-Hardy, M.R., said the Act was so framed that it was difficult, if not impossible, to arrive at a clear and satisfactory conclusion, but he thought the arguments of the appellant should prevail. Sec. 47, he said, provided for a general notice; sec. 48 provided for a personal notice, and, in default of a return, the Commissioners were to issue a

summons in order that the penalty might be duly levied. These words clearly referred to sec. 55. Sec. 49 prescribed the place and time of delivery; sec. 50 required a list of employees; sec. 51 required trustees to deliver statements on behalf of their beneficiaries; and sec. 52 dealt with a person himself liable. Sec. 55. he said, was ungrammatical and almost unintelligible. It is as follows:—

Penalties.

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**Inaccurate
return.**

“If any person who ought by this Act to deliver any list, declaration, or statement as aforesaid shall refuse or neglect so to do within the time limited in such notice, or shall under any pretence wilfully delay the delivery thereof, and if information thereof shall be given, and the proceedings thereupon shall be had before the Commissioners acting in the execution of this Act, every such person shall forfeit any sum not exceeding twenty pounds and treble the duty at which such person ought to be charged by virtue of this Act, such penalty to be recovered as any penalty contained in this Act is by law recoverable, and the increased duty to be added to the assessment, but, nevertheless, subject to such stay of prosecution or other proceedings by a subsequent delivery of such list, declaration, or statement, in the case following (that is to say), if any trustee, agent, or receiver, or other person hereby required to deliver such list, declaration, or statement on behalf of any other person, shall deliver an imperfect list, declaration, or statement, declaring himself unable to give a more perfect list, declaration, or statement, with the reasons for such inability, and the said Commissioners shall be satisfied therewith, the said trustee, agent, or receiver, or other person as aforesaid, shall not be liable to such penalty in case the Commissioners shall grant further time for the delivery thereof; and such trustee, agent, receiver, or other person shall, within the time so granted, deliver a list, declaration, or schedule as perfect as the nature of the case will enable him to prepare and deliver; and any person who shall be prosecuted for any such offence by action or information in any of His Majesty's Courts, and who shall not have been assessed in treble the duty as aforesaid, shall forfeit the sum of fifty pounds.”

Penalties.**A.-G. v. Till.****Inaccurate
return.****Coxens-
Hardy, M.R.**

Sec. 129 provides :—

“ Provided always, that if any person who shall have delivered a statement or schedule shall discover any omission or wrong statement therein, it shall be lawful for him to deliver an additional statement or schedule rectifying such omission or wrong statement, and such person shall not afterwards be subject to any proceeding by reason of such omission or wrong statement; and if any person shall not have delivered a statement or schedule within the time limited by the Commissioners for that purpose, it shall be lawful for him to deliver a statement or schedule, in manner herein directed (section 120), at any time before a proceeding shall be had to recover the penalty herein mentioned (section 128), and no proceeding shall be afterwards had for recovering such penalty; and if any proceeding shall have been actually had before the Commissioners for recovering such penalty, it shall be lawful for the same Commissioners, on due proof to their satisfaction that no fraud or evasion whatever was intended, to stay such proceedings, either on the terms of paying or without paying the costs then incurred, as the Commissioners shall think fit; and if any proceedings shall have been commenced in any Court, it shall be lawful for the Commissioners to certify that, in their judgment, no fraud or evasion was intended by the party making such omission, and it shall be lawful for any Judge of such Court, on a summary application, to stay such proceedings on such terms as he shall think fit; or if such person shall have delivered an imperfect statement or schedule, and shall give to the Commissioners a sufficient reason why a perfect statement or schedule cannot be delivered, the said Commissioners, being satisfied therewith, shall give further time, and so from time to time, for the delivery of such statement or schedule; and such person shall not be liable to any penalty for not having delivered such statement or schedule within the time before limited, in case such person shall have delivered as perfect a statement or schedule as from the nature of the case he was enabled to give, and so from time to time as long as the Commissioners shall grant further time as aforesaid.”

It was contended, he said, on the one hand, that the words “ as aforesaid ” (sec. 55) referred to the previous sections.

If so, the result would be that any error or omission, however slight or however innocent, involved the penalty. On the other hand, it was contended that the section applied only to non-delivery, as distinct from an imperfect or inaccurate statement. He thought the latter the preferable view, because—

Penalties.

A.-G. v. Till.

**Inaccurate
return.**

- (1) Other sections (68 and 178) spoke of a person having delivered “such account as aforesaid,” although it was false.
- (2) The words “as aforesaid” naturally referred to sec. 48. He suggested that a document might be so illusory that a tribunal would be justified in holding there had been no delivery.
- (3) The Act contained provisions not of a penal character for rectifying errors, &c. (sec. 129).
- (4) The Act imposed a penalty on a person for making a false or fraudulent statement, which was less severe than that which, on the other hypothesis, was imposed upon an honest mistake (sec. 178).
- (5) The proviso in the middle of sec. 55 presupposed non-delivery, and then authorised delivery of an imperfect list.
- (6) The Revenue had power to assess (sec. 113) and to surcharge (secs. 161, 162).

On the other hand, sec. 50 supported the opposite view. Sec. 129 did not apply, nor did sec. 113, nor sec. 161.

Penalties.**A.-G. v. Tili.****Inaccurate
return.**

On the whole, he was not satisfied that the arguments addressed in this case had been so fully presented to the Scotch Court, in *Lord Advocate v. Sawers*, and he felt unable to decide this case in accordance with the view adopted in the Scotch Courts.

**Moulton,
L.J.**

Moulton, L.J., said that the view expressed in the Scotch Courts, that the slightest inaccuracy in a statement should make its delivery a nullity, was a very startling proposition. He thought very different language would have been used if that had been intended. Moreover, the nature of the penalty suggested that only non-delivery was aimed at. The penalty was treble the duty on the whole assessment. This might be necessary and proper where there was a total failure, but there was no justification for it if there was only an inaccuracy. The contention of the Crown could not logically stop even at requiring every detail to be absolutely accurate and strictly in accordance with the Acts ; it must extend, whether the mistake was for or against the person delivering the statement, or even had no effect either way. The presumption in favour of the section dealing with non-delivery only was strengthened by sec. 178. There the penalty depended on the magnitude of the error. It seemed to him incredible that the Legislature should have inflicted a less penalty for a fraudulent return than for an honest mistake. Sec. 127 was also in the same direction, where the penalty was three times the surcharge only. The decision of the Court below rested, he said, entirely on the interpretation of the words "as aforesaid." But, in his opinion, the Act countenanced no such interpre-

tation. He alluded to secs. 178, 68, 67, and 177, which all supported the view that non-delivery was dealt with. He thought *Lord Advocate v. Sawers* had not been fully argued. The decision seemed to have turned on an interpretation of the latter portion of sec. 55, but he thought the latter part of that section was in favour of the defendant. Both sec. 55 and sec. 129 pointed to non-delivery. The Crown had argued that there was no hardship in the penalties because the Commissioners had power to relieve against them. The argument, he said, had very little effect in reconciling him to an interpretation which made the penalties of an unnecessary and almost barbarous severity. There was a temptation to use powers of this kind for an indirect purpose, an example of which was given in the present case. If the Crown's contention were correct, he thought the Court had no jurisdiction to lessen the amount. It was practically admitted that this action was brought to indirectly recover sums otherwise irrecoverable. If penalties were to be used for indirect purposes, the taxpayer was practically at the mercy of the Commissioners. The existence of an error, however small, would put them in the position of being able to insist that almost any view they might entertain should be accepted, and he did not think that His Majesty's subjects should be left so defenceless unless it could be shown that it was the clear meaning of the Act.

**Penalties,
A.-G. v. Till.
Inaccurate
return.**

Buckley, L.J., was of the same opinion. He thought sec. 56 bore out the view that sec. 55 applied only to non-delivery. Sec. 50 certainly presented a difficulty, and he

Buckley, L.J.

Penalties.**A.-G. v. Tili.****Inaccurate
return.**

thought it was inconsistent with other provisions of the Act. He also differed from the decision in *Lord Advocate v. Sawers*, thinking it had not been fully argued.

The case was subsequently heard in the House of Lords on November 15th and 16th 1909, and judgment was unanimously given for the Crown on December 8th.

**Lord
Chancellor.**

The Lord Chancellor said the penalty attached if the person failed to deliver any statement or delivered one which was incorrect. It had been argued that if this were so, a hard penalty might fall on a person who made an innocent mistake, and it had been urged that it was no answer to say that the Crown would never use such a power. He agreed that such an answer could not prevail, but he did not think it was true that an innocent mistake exposed a man to those penalties. Full relief was given by sec. 129.

**Lord
Atkinson.**

Lord Atkinson agreed that judgment should be given for the Crown, but he did not think that their contention, as he understood it, was well founded—viz., that any taxpayer who sent in a statement of the gains and profits earned by him in his trade or business, which statement was erroneous in fact, necessarily became liable to the penalties. He continued :—

“With all due respect to the Court of Appeal, it would appear to me that, finding themselves confronted with this contention, they allowed themselves to be too much influenced by the quite natural repugnance which one must necessarily feel against adopting a construction of these enactments which would render the subject liable to these very heavy penalties if, while honestly endeavouring to furnish a correct statement according to his light, he made some mistake, or was guilty of some error in estimating what his gains and profits amounted to.”

Rule XV. of sec. 190 provided that the declaration was that the profits were truly stated, "estimated to the best of his judgment and belief according to the directions and rules of the Act." No doubt the words in sec. 129, "and such person shall not afterwards be subject to any proceedings by reason of such omission or wrong statement," would seem to suggest that he would be liable if he had made a statement not true in fact, though true and accurate according to his belief, but he did not think that was enough to override the express words of sec. 190 and the rules. He thought the jury should have been asked to find whether the respondent applied the rules according to the best of his judgment and belief. Their finding of "negligence" must, he thought, be taken as a finding that he did not so apply them.

Penalties.

A.-G. v. Till.
Inaccurate return.

Lord Gorell reviewed the various sections, including sec. 190 (XV.), and stated that the finding of the jury disposed of any suggestion that the estimate had been made to the best of Mr. Till's judgment and belief. Sec. 55, he stated, was ill-expressed, and so much so as to trustees, &c., as to render it almost unintelligible. He understood the judgment of the Court of Appeal to proceed on three main grounds :—

Lord Gorell.

- (1) That the wording of the section was not such as to impose in plain terms a penalty for an incorrect return.
- (2) That if it did the penalty was exigible, however slight or innocent the error.
- (3) That other sections showed only non-delivery was aimed at (because less penalties were stated for fraudulent returns).

Penalties,
A.-G. v. Till.
Inaccurate
return.
Lord Gorell.

He thought—

- (1) That sec. 55 clearly related to both non-delivery and inaccurate delivery. The first line of the section was meant to have read, “ Any *such* list— ” and the section should read as if “ *such* ” were inserted. The proviso in favour of trustees pointed to that reading.
- (2) He was not satisfied, without further argument on the point, that the penalty would be incurred in such a case ; but that was not the case here, where the return had been made negligently. Further, it was not disputed that the penalty arose on failure to deliver within the time, so that the delay of a single day would bring the person within the penalty. “ I should expect,” he said, “ that common experience would show that these hardships do not occur in practice.”
- (3) Lesser penalties for a greater offence (sec. 178) could not prevent the reading of sec. 55 according to its terms.

There was a further important section (129). This was also badly drafted. It might be doubted whether it applied only to the sections immediately preceding, but he thought it covered sec. 52, &c. It seemed a necessary implication that in the absence of that section a person would be liable under sec. 55 for having delivered an incorrect statement, and he thought the word “ omission ” in the latter half covered both

omission to deliver at all and omission to deliver a proper statement.

Penalties.

A.-G. v. Till.

**Inaccurate
return.**

Lord Shaw agreed. He also reviewed the various sections. As to any relief under sec. 129, it was admitted that the respondent did not deliver any rectifying statement, that the Commissioners had not made any certificate, and that, in short, sec. 129 had not been, and could not now be, invoked. He answered seriatim the six points in the judgment of the Master of the Rolls as follows:—

Lord Shaw.

- (1) There was no inconsistency in the language of the sections. The real meaning was to make operative both a duty and a penalty; the penalty was for the falsehood of that which was bound to be returned as true. It purported to be true, and turned out to be false.
- (2) He thought the sounder view was that “as aforesaid” referred to all the previous sections, including very particularly sec. 52.
- (3) He differed strongly as to the inference to be drawn from sec. 129. The provision of a means of escape from penal consequences seemed to him to point conclusively to the initial duty having been to make a true and accurate statement. It would appear an extraordinary thing to say to the taxpayer that he could deliver *anything* and afterwards correct it, perhaps on the eve of proceedings.

Penalties.*A.-G. v. Till.***Inaccurate
return.**

- (4) This was well worthy of consideration. But it was unsafe to deduce from the various penal sections any view that penalties were graduated upon any scale of moral delinquency. As a matter of administration, defects in returns, unless heavily punished, might become widespread and habitual, and so cause great interruption to the efficiency of departmental work.
- (5) He thought the view expressed was inconsistent with the terms of sec. 55. Accuracy was expected all round, but as trustees might not have such access to information as would be in the possession of an ordinary taxpayer, special provisions dealing with salary, &c., not unnaturally occurred.
- (6) The powers of surcharge, &c., were because, in addition to penalties, the Inland Revenue must gather in the taxation.

**Where return
is to be made.**

The returns for assessment on persons engaged in trade, &c., are to be made in the parish or place where the trade, profession, or concern is carried on, or the employment or vocation exercised (1842, sec. 106).

Travellers.

Travellers of a firm would be assessed at the place where the business of the firm is carried on if travelling for only one firm, but at their residences if for more than one.

**Form No. 11b
for quarries,
mines, &c.**

A separate form (No. 11B) is provided for the return of profits or annual value of quarries, mines, iron works, gas works, salt springs or works, alum mines or works, water

works, streams of water, canals, inland navigations, docks, drains and levels, fishings, rights of markets and fairs, tolls, ways (except railways, for which a special form, No. 10B, is provided), bridges, ferries, and other concerns of a like nature.

The taxpayer in England or Scotland may elect to be assessed either— **By whom assessment is made.**

(1) By the Commissioners of the district in the ordinary course (1842, sec. 111).

(2) By the Commissioners of the district under a number or letter (1842, sec. 137).

(3) By the Commissioners for Special Purposes appointed by the Crown (1842, sec. 131).

In Ireland all assessments are under the Special Commissioners.

If the second or third method be selected, the desire of the taxpayer is to be added to the general declaration on page 2 of the form, and, on the completion thereof, the form is to be directed to the Clerk to the Commissioners in case (2), or to the Surveyor of Taxes for the district (instead of to the assessor) in case (3), and endorsed "Number or Letter," or "For Special Assessment," as the case may be.

If there is not any such wish expressed, the assessment will be made by the General Commissioners in the ordinary course. **Assessment by General Commissioners.**

**Assessment by
Special Com-
missioners.**

The advantage of being assessed by the Special Commissioners is that they are Government officials, whereas the General Commissioners are local gentlemen, and possibly competitors in trade, neighbours, or bankers, to whom it may be considered very undesirable to disclose the amount of profit made. In the case of a desire being expressed for the assessment to be made by the Special Commissioners, the return only passes under the notice of the Surveyor and themselves, and it is not seen by the General Commissioners. Where an assessment is made by the Special Commissioners, the tax is to be paid to the Accountant and Comptroller-General of Inland Revenue, or the proper officer for receipt, according as these Commissioners direct. In Scotland, tax in respect of all special assessments is to be paid to the Collector of Inland Revenue, Edinburgh.

**Assessment
under number
or letter.**

In the case of a person electing to be assessed by the General Commissioners under a number or letter, the return of profits made is submitted to the General Commissioners, and if they are satisfied with the declaration made, they issue a certificate of assessment to the party (who must pay the duty on or before the 1st January), and they exclude his name and assessment altogether from the duplicate of assessments delivered to the local collector. They then send a duplicate of assessment, containing only the number or letter under which the party is assessed, together with the amount of duty payable, to the officer of receipt (*i.e.*, the collector of Inland Revenue for the district), and the party must make payment on or before 1st January to this officer, as already stated, and

not to the local collector of taxes. If, however, he fails to pay the duty before the 1st January, the Commissioners may authorise the local collector to recover the same as in the case of assessments by name (1842, secs. 137 to 142).

Assessment under number or letter.

It may be noticed from the form No. 11 that the instructions given are very clear and concise, and if carefully followed out they should be of material assistance in arriving at the amount to return.

In *Re The Watchmakers' Alliance and Ernest Goode's Stores, Lim.* (Chancery Division, 28th March and 14th November 1905) it was held that where liquidators had paid away all the assets to contributors and others, without making provision for a claim of the Crown for income tax, they must pay the amount to the Crown; and that, in default of payment, a writ of attachment was issuable as a matter of right, the Court having no discretion in the matter.

Watch-makers' Alliance.
Liability of liquidator.

Prior to 1907 royalties payable in respect of patents were taxed in the hands of the recipient, and not by way of deduction; now, however, by the Finance Act 1907, sec. 25, it is provided:—

Royalties not to be deducted.

(1) In estimating, under any schedule of the Income Tax Acts, the amount of the profits and gains arising from any trade, manufacture, adventure, concern, profession, or vocation, no deduction shall be made on account of any royalty, or other sum, paid in respect of the user of a patent, but the person paying the royalty or sum shall be authorised, on making the payment, to deduct and retain thereout the amount of the rate of income tax chargeable during the period through which the royalty or sum was accruing due.

(2) Subsection (3) of section 24 of the Customs and Inland Revenue Act 1888 (*post*), shall apply to any such royalties or sums as it applies to interest of money or annuities charged with income tax under Schedule D in the Income Tax Act 1853.

Lanston Monotype Corporation, Lim. v. Anderson.

In the case of *Lanston Monotype Corporation, Lim. v. Anderson* judgment was delivered in the King's Bench Division on the 15th February 1911, and, on appeal, in the Court of Appeal, 26th July 1911. The question was whether a royalty which had been payable up to 31st December 1906, and which then ceased, was to be added to the profits of the years 1904, 1905, and 1906, in computing the amount for assessment for 1907-8 (Finance Act, 1907, sec. 25 (1)).

Royalty not payable in current year.

In the High Court. Hamilton, J., held (with doubt and regret) that the words of the section clearly made the royalty an addition to the profit, and the decision of the Commissioners (in favour of the Corporation) was therefore reversed, but this was overruled by the Court of Appeal.

Omission to deduct annual value of trade premises.

The deduction which may be claimed for annual value of premises used for the purpose of business is frequently overlooked in the case of a firm or company occupying their own works, and many cases have come under our notice where there has not been any such deduction made. The result is, that such persons have paid tax twice on the annual value of their premises—viz., under both Schedule A. and Schedule D. It is submitted that this would be a "double assessment" within the meaning of sec. 171 of the Act of 1842, which provides that—

Double assessment.

“Whenever any person shall have been assessed to any of the duties granted by this Act . . . and shall by any error or mistake be again assessed for the same cause, and on the same account, and for the same year . . . the Commissioners . . . shall cause such assessment . . . to be vacated . . . and whenever it shall be proved to the satisfaction of the Commissioners of Inland Revenue that such double assessment hath been made, and hath not been vacated, and that payment hath been made of both assessments, it shall be lawful for the said Commissioners of Inland Revenue to order and direct the Receiver-General of Inland Revenue, or any officer for receipt, to repay to the party the sum so erroneously and doubly assessed upon him, and paid as aforesaid.”

**Double
Assessment.**

The section does not express any limit as to the time within which a claim must be made, and there would not appear to be any objection to a claim for three years (the general limit prescribed by the Act of 1860, sec. 10); but, so far as we are aware, there has not been any case decided by the Courts on this point. As a strict matter of law, the point is not by any means certain, as it might well be said in such a case that the *assessment* had not been made “by any error or mistake,” but that it had followed upon the return in the ordinary course, and that the “error” had been in the double *return*. In a somewhat similar case, *The Holborn Viaduct Land Company, Lim. v. The Queen (post)*, Mr. Justice Stephen said :—

“The conclusion, therefore, is that this claim is not to be allowed unless it is made within three years. Then this claim was certainly not made within two or three years, and I think therefore, on that view, that the utmost amount which can in any case be claimed is the amount for the last three years.”

It will be seen that this does not admit a *right* to repayment for three years, but the department will always allow such a claim.

To arrive at
amount of
profit to
return.

Before considering in detail the various regulations as to making returns of profits, we will take as an illustration, applicable to almost any trade, the case of a firm carrying on the business of cotton spinning. There are, broadly, two methods of preparing accounts for income tax purposes, viz. :—

Accounts
applicable
generally.

- (1) To prepare a Profit and Loss Account as for ordinary purposes, and then to make the necessary adjustments.
- (2) To prepare a Profit and Loss Account, excluding items not allowed as deductions.

Both these accounts would give the same result, but the latter would not show the balance of profit for ordinary purposes.

The following accounts illustrate the difference between the two methods :—

MESSRS. A. B. & Co.

PROFIT AND LOSS ACCOUNT FOR ORDINARY PURPOSES ADJUSTED TO INCOME TAX PURPOSES,
for the three years ended 31st December 1910.

Dr.

Cr.

	Year ended 31st Dec. 1908	Year ended 31st Dec. 1909	Year ended 31st Dec. 1910		Year ended 31st Dec. 1908	Year ended 31st Dec. 1909	Year ended 31st Dec. 1910
	£ s d	£ s d	£ s d		£ s d	£ s d	£ s d
To Consumption of Cotton, &c. ..	3,000 0 0	3,000 0 0	3,250 0 0	By Production of Yarn	9,350 0 0	10,550 0 0	11,450 0 0
Wages and Trade Expenses ..	4,000 0 0	4,500 0 0	4,750 0 0	Do.	100 0 0	120 0 0	150 0 0
Chief Rent	10 0 0	10 0 0	10 0 0				
Charitable Subscriptions ..	21 0 0	21 0 0	21 0 0				
Interest on Mortgage ..	40 0 0	40 0 0	40 0 0				
Rent and Local Rates ..	150 0 0	160 0 0	160 0 0				
Income Tax, Schedules A and D ..	25 0 0	30 0 0	35 0 0				
Wear and tear of Buildings ..	200 0 0	194 0 0	188 0 0				
Plant	400 0 0	380 0 0	360 0 0				
Partners' Salaries	500 0 0	500 0 0	500 0 0				
Interest on Capital	500 0 0	500 0 0	500 0 0				
Balance carried down, Profit per Private Ledger	804 0 0	1,435 0 0	1,786 0 0				
	£9,650 0 0	£10,770 0 0	£11,600 0 0		£9,650 0 0	£10,770 0 0	£11,600 0 0
Assessment under Schedule A on portion of Works owned and occupied by the firm, viz., 5/6ths of gross annual value	200 0 0	200 0 0	200 0 0	By Balances brought down, Profit per Private Ledger	804 0 0	1,435 0 0	1,786 0 0
Balances carried down, Profit for Income Tax purposes	2,300 0 0	2,910 0 0	3,240 0 0	" Deductions per contra, not allowed for Income Tax purposes—			
				Chief Rent	10 0 0	10 0 0	10 0 0
				Charitable Subscriptions ..	21 0 0	21 0 0	21 0 0
				Interest on Mortgage ..	40 0 0	40 0 0	40 0 0
				Income Tax	25 0 0	30 0 0	35 0 0
				Wear and tear of Buildings, &c.	200 0 0	194 0 0	188 0 0
				Ditto of Plant	400 0 0	380 0 0	360 0 0
				Partners' Salaries	500 0 0	500 0 0	500 0 0
				Interest on Capital	500 0 0	500 0 0	500 0 0
	£2,500 0 0	£3,110 0 0	£3,440 0 0		£2,500 0 0	£3,110 0 0	£3,440 0 0
				Balances brought down, Profit for Income Tax purposes	2,300 0 0	2,910 0 0	3,240 0 0

MESSRS. A. B. & Co..

PROFIT AND LOSS ACCOUNT FOR INCOME TAX PURPOSES, for the three years ended 31st Dec. 1910
(excluding payments and other items not chargeable, and including deduction for

Dr.	assessment under Schedule A).				Cr.			
	Year ended 31st Dec. 1908	Year ended 31st Dec. 1909	Year ended 31st Dec. 1910		Year ended 31st Dec. 1908	Year ended 31st Dec. 1909	Year ended 31st Dec. 1910	
	£ s d	£ s d	£ s d		£ s d	£ s d	£ s d	
To Consumption of Cotton, &c. ..	3,000 0 0	3,000 0 0	3,230 0 0		9,550 0 0	10,650 0 0	11,430 0 0	
Wages and Trade Expenses, ..				By Production of Yarn ..	100 0 0	120 0 0	150 0 0	
not including any charge ..				Do. ..				
for Chief Rent, Interest on ..								
Mortgage, Income Tax, or ..	4,000 0 0	4,500 0 0	4,750 0 0					
Charitable Subscriptions ..	150 0 0	160 0 0	160 0 0					
Rent and Local Rates ..								
Assessment under Sch. A on ..								
portion of Works, owned ..								
and occupied by the firm, ..	200 0 0	200 0 0	200 0 0					
viz., 5/6ths of gross annual ..								
value ..	2,300 0 0	2,910 0 0	3,240 0 0					
Balances carried down, Profit ..								
for Income Tax purposes ..				By Balances brought down, Profit ..				
	£9,650 0 0	£10,770 0 0	£11,600 0 0	for Income Tax purposes ..	£9,650 0 0	£10,770 0 0	£11,600 0 0	
					2,300 0 0	2,910 0 0	3,240 0 0	

It is submitted that the former is the better one, as it at once discloses what deductions have been written back.

There is always absolute secrecy as to accounts furnished.

In *Brown's Trustees v. Hay* (Court of Session, Scotland, 26th October 1897) it was held that a public department cannot be compelled by a Court of law to produce confidential documents in its possession coming from third parties; if so to compel it would be to discourage similar communications being made in future. The case arose in connection with an action against an auditor for having *inter alia* made statements to the Inland Revenue authorities regarding the income tax which ought to have been paid by the trader, and production was sought of certain documents passing between the auditor and the Inland Revenue authorities.

*Secrecy of
returns, &c.,
Brown's
Trustees v.
Hay.*

In *Re Joseph Hargreaves, Lim.*, the liquidator called on the Surveyor at Bradford to produce under sec. 115 of the Companies Act 1862 copies of certain Balance Sheets which had been furnished to him for the purpose of an assessment. The Court, in their discretion, refused to compel production, having before them the opinion of the Board of Inland Revenue that the public service would suffer by such production of confidential documents (Chancery Division, 14th December 1899). The liquidator appealed, but the Court of Appeal, without calling on the Crown, dismissed the appeal (24th January 1900), stating that usually the Court of Appeal would not interfere with the discretion of the Court exercised under this section.

*Re Joseph
Hargreaves,
Lim.*

Shaw v. Kay. Similarly, in *Shaw v. Kay* (Court of Session, Scotland, 19th October and 3rd December 1904), where application was made for the production by the Surveyor of Taxes of income tax returns with a view of proving that a defendant was in a position to repay a loan, leave was refused by the Court on the ground of confidentiality and public interest. The plaintiff had obtained an order for production by the defendant of his income tax receipts, and the defendant had sworn that he had, and had had no such receipts. Lord Pearson said he recognised the hardship in the plaintiff being deprived of that aid, and it might be that possibly he could not prove his case in any other way ; but private convenience must give way to public interest. It was difficult, he said, to imagine so exceptional a case as would justify the Court in compelling discovery in the exercise of their discretion.

**Mode of
dealing with
Stock.**

It may be observed that the account is drawn to show (as it would do in a complete system of bookkeeping) the *production* of yarn, thus—

Sales	...	...	...	... £
Add Stock 31st Dec.	...			... — £
Less Purchases	...	...		
Stock 1st Jan.	...	...		... — £

and *consumption* of cotton, &c., thus—

Purchases	...	...	... £
Add Stock 1st Jan.	...		... — £
Less Sales	...	...	
Stock 31st Dec.	...	...	... — £

i.e., the stock has been analysed, and the amount of it appertaining to each item at the beginning and end of each year has been taken into account. This is instead of entering the stock at the beginning and end of each year in one sum on the debit and credit sides of the account respectively, and dealing with *sales* of yarn and *purchases* of cotton. The result is, of course, the same; and, in the case of accounts being produced, either will do equally well, according to the method in which the books may have been kept.

If the books have not been kept on the system of double entry the trader may, by means of an account arrived at by drawing statements of affairs at the commencement and end of the period under review, arrive at what he may consider to be a sufficiently accurate estimate of profits. If, however, his return is not accepted, and he wishes to appeal (see Part III. of this chapter), he will usually be required to produce such an account as is here given.

**Bookkeeping
by Single
Entry.
How profit
may be
ascertained.**

The difference between a Cash Account and a Profit and Loss Account is one affecting bookkeeping as such rather than income tax. It may not, however, be out of place to mention it. It may be assumed that no one in ordinary commercial business would for a moment regard a Cash Account as a Profit and Loss Account, but a Cash Account is frequently used by solicitors as a basis of settlement, and indeed in *Badham v. Williams* (1902) it has been held that this is the proper basis for *division* of profit. The point also arises in practice in the case of retail traders, who keep their books

**Difference
between Cash
Account and
Profit and
Loss Account.**

Difference
between Cash
Account and
Profit and
Loss Account.

on a semi-double-entry system—viz., do not balance their *Dr.* Ledger.

The result produced over a series of years will be the same in each case, subject to adjustment in the last year ; but this is not sufficiently accurate for income tax purposes, where the profit is required year by year. It will usually happen that a great deal of work has been done one year, the payment for which comes into a subsequent year, and the difference is even more accentuated in the *first* year of a business. Assume a Cash Account for such first year as follows (omitting drawings, &c.) :—

Costs received	£1,500	Expenses	£1,200
		Balance	300
	<u>£1,500</u>		<u>£1,500</u>

There may be £300 of outstanding costs, and rent, &c., due £100. The Profit and Loss Account should, of course, be—

Expenses paid ..	£1,200	Costs received ..	£1,500
Expenses accrued	100	Costs accrued due	300
	<u>£1,300</u>		<u>£1,800</u>
Balance. Profit	500		<u>£1,800</u>
	<u>£1,800</u>		

To follow it on another year, assume the Cash Account to be—

Costs received	£3,000	Expenses	£1,700
		Balance	1,300
	<u>£3,000</u>		<u>£3,000</u>

And now let us suppose the costs outstanding are £500, and rent, &c., due £150. The Profit and Loss Account becomes—

Difference between Cash Account and Profit and Loss Account.

Expenses paid ..	£1,700	Costs received ..	£3,000
Less last year's liabilities ..	100	Less last year's accrued ..	300
	<u>1,600</u>		<u>2,700</u>
Add new liabilities	150	Add new costs accrued ..	500
	<u>£1,750</u>		<u>£3,200</u>
Balance, Profit	1,450		
	<u>£3,200</u>		<u>£3,200</u>

The question arising (as suggested) in the accounts of retail traders requires exactly similar treatment.

The account must not run into the current year; thus, if the books are only made up annually to, say, 30th April, the return for 1911-12 ending 5th April 1912 would have to be on the three years ended—

Years to be brought into average.

30th April 1908,
 „ „ 1909, and
 „ „ 1910.

If the trade expenses are entered in one item, instead of being particularised, and the second form is used, it is rather important that the item should read :—

Trade expenses.

“Wages and trade expenses, not including any charge for chief rent, interest on mortgage, income tax, or charitable subscriptions,”

otherwise the surveyor usually asks whether any such items are included. However much they are particularised there

Charitable Subscriptions.

will almost invariably be an item "Sundry Expenses," or "Miscellaneous Expenses." To avoid a similar query as to this, it is desirable to add "not including any charge for charitable subscriptions"—as these are looked upon not as a trade charge, but as a disposal of profit. Where, however, subscriptions are paid by a manufacturer to an infirmary—where any of his workpeople might be sent if injured—such subscriptions are allowed as a deduction, the payment being looked upon as a trade expense.

Income Tax paid on salaries of employees.

Some companies pay the income tax chargeable on the salaries of the officials, and it has been argued that this, being (so to speak) an addition to the salary, should be allowed as such. This is sound, but it is at once apparent that being so allowed it must be added to such salary, and paid upon in that manner, and it might affect the amount allowed for abatement or life insurance.

Thus, if A. receive a salary of £590 per annum, and the company pay the tax thereon, that is equivalent (assuming him to be entitled to the relief to "earned" incomes) to £613. less £23 tax thereon, and there would only be an abatement of £70 allowed thereon: further, he would be entitled to an allowance for life insurance up to one-sixth of £613.

A bonus paid to an employee would be allowed as a deduction from the business profits, and would be income in the hands of the recipient.

Proceeding now to prepare the return for assessment to tax for the year 1911-12, ending April 1912. We take

	£	s	d	
Profit for the year ending 31st Dec. 1908 ...	2,300	0	0	Average profit.
„ „ „ 31st Dec. 1909 ...	2,910	0	0	
„ „ „ 31st Dec. 1910 ...	3,240	0	0	
	3)8,450	0	0	
Average annual profit	£2,816	13	4	

In the example given the firm are supposed to *rent* part of the premises, and to *own* part. This will be at once apparent from the fact that Income Tax Schedule A is charged against the profit, for, as previously pointed out, it is a landlord's tax, and would not be borne by a firm who did not own premises. The annual value of the premises owned is charged as an expense, just as the rent is, and tax will be paid on it under Schedule A.

Deduction of annual value under Sch. A since Finance Act 1904.

The provisions of the Acts as to deduction from profits under Schedule D of annual value under Schedule A are as follows :—

“ The computation of the duty to be charged in respect of any profession, trade, manufacture, adventure, or concern, whether carried on by any person singly, or by any one or more persons jointly, or by any corporation, company, fraternity, or society, shall be made exclusive of the profits or gains arising from lands, tenements, or hereditaments occupied for the purpose of such profession, trade, manufacture, adventure, or concern.” (2nd rule applying to the first and second cases of Schedule D, 1842, sec. 100.)

M

Deduction of annual value under Sch. A. since Finance Act 1894.

“ . . . In the case of an assessment upon any house or building . . . the amount of the assessment shall, for the purposes of collection, be reduced . . . by a sum equal to one-sixth part of that amount. . . .” (1894, sec. 35.)

“ Where in estimating the amount of annual profits or gains arising or accruing from any profession, trade, employment, or vocation, and chargeable to income tax under Schedule D of the Income Tax Act 1853, any sum is deducted on account of the annual value of the premises used for the purpose of such profession, trade, employment, or vocation, the sum so deducted shall not exceed the amount of the assessment of the premises for the purpose of income tax under Schedule A to the said Act, as reduced for the purpose of collection under sec. 35 of the Finance Act 1894.” (1898, sec. 9.)

Rent or annual value in cases of change in assessment, &c.

A question sometimes arises as to how the rent or annual value of premises is to be dealt with in cases where it is not uniform in the three years. Suppose a trader rents his premises for two years and then purchases them. His profits for the first two years after charging rent of, say, £400, are £1,000 and £1,200, and for the third year, when he does not pay rent, his profits are £1,800. The proper course is to charge the amount of assessment to Schedule A, in respect of annual value, to his trading in the third year, not to take the average and then deduct it. He must, in fact, make an adjustment between himself as tenant and as landlord. The result would be—

First year's profit after charging rent	... £1,000
Second do. do.	... 1,200
Third do. after deducting annual value assessed under Schedule A, £400	... 1,400
	<u>£3,600</u>
Average ...	... £1,200

Our view is that the Schedule A assessment would be dealt with in precisely the same manner if it had varied in any way from year to year. Thus, reverting to the accounts given (pp. 153 and 154), if the assessments had been :—

Rent or annual value in cases of change in assessment, &c.

1908	...	£200
1909	...	250
1910	...	300

the profits would have been :—

1908	...	...	£2,300
1909	...	...	2,860
1910	...	...	3,140
			3) 8,300

An average of ... £2,766 13s. 4d.

The authorities approve this method, and apply it, subject to variation in exceptional cases.

An apparent injustice arises where a person has rented his business premises for two years and then buys them.

Assume :—

	To 31st March 1908, 1909, 1910.			To 31st March 1911.	
Profit for year	...	...	...	£1,000	...
Less Rent, 1908, '09, '10	...	...	...	120	...
Annual Value, 1911	...	...	...	...	100
Net	...	...	£880	...	£880

* £1,000, less Repairs to Buildings, £20.

The original return for 1910-11 would be £880. Tax would be paid under Schedule A on £100, and it is frequently suggested that this should then be deducted from the £880

under Schedule D. Those who so argue overlook the fact that the £880 is arrived at *after a charge for rent*, though at first sight their argument appears sound. Another reason against their contention is that, if it were correct, the change of ownership would diminish the amount receivable by the Crown by the amount of the Schedule A assessment.

Average when
there is a loss
in one year.

Should any year result in a loss instead of a profit (say, for example, the third year), the average would be—

Profit for the year ending 31st Dec. 1908 ...	£2,300	0	0
„ „ „ 1909 ...	2,910	0	0
	£5,210	0	0
Less loss for the year ending 31st Dec. 1910,			
(say)	3,240	0	0
	3)	1,970	0 0
Average annual profit	£656	13	4

Filling up
the form of
return.

The amount brought out by the average (£2,816 13s. 4d., p. 161, or £656 13s. 4d., above, in the case before us) should be filled in on the second page of the form. It then only remains to fill in the amount claimed for wear and tear of machinery, the amount of which allowance is (by the Act of 1878) in the discretion of the Commissioners, prior to which time there had not been any such allowance.

The text of the Act is as follows :—

**Wear and
tear.
Act of 1878.**

“Notwithstanding any provision to the contrary contained in any Act relating to income tax, the Commissioners for general or special purposes shall, in assessing the profits or gains of any trade, manufacture, adventure, or concern in the nature of trade, chargeable under Schedule D, or the profits of any concern chargeable by reference to the rules of that schedule, allow such deduction as they may think just and reasonable as representing the diminished value by reason of wear and tear during the year of any machinery or plant used for the purposes of the concern, and belonging to the person or company by whom the concern is carried on; and for the purpose of this provision, where machinery or plant is let to the person or company by whom the concern is carried on upon such terms that the person or company is bound to maintain the machinery or plant, and deliver over the same in good condition at the end of the term of the lease, such machinery or plant shall be deemed to belong to such person or company.

“And where any machinery or plant is let upon such terms that the burden of maintaining and restoring the same falls upon the lessor, he shall be entitled, on claim made to the Commissioners for general or special purposes, in the manner prescribed by section sixty-one of the Act of the fifth and sixth years of Her Majesty’s reign, chapter thirty-five, to have repaid to him such a portion of the sum which may have been assessed and charged in respect of the machinery or plant, and deducted by the lessee on payment of the rent, as shall represent the income tax upon such an amount as the said Commissioners may think just and reasonable, as representing the diminished value by reason of wear and tear of such machinery or plant during the year: Provided that no such claim shall be allowed unless it shall be made within twelve calendar months after the expiration of the year of assessment.”

As illustrating the circumstances under which this Act came to be passed, we gave in the Appendix to the Fourth Edition extracts from the Inland Revenue Reports for the years ended 31st March 1877 and 1878.

Return by
partner after
claim under
Act of 1890.

An interesting case in practice arose in respect of a return after a claim had been made by one of two partners (A. and B.) under the Act of 1890. Assume the following figures :—

Year 1903	...	...	...	Profit	£10,000
„ 1904	...	...	...	„	5,000
„ 1905	...	...	...	Loss	40,000

A., having private taxed income and a private business, recovered tax on his share of the £40,000. For the year 1906-7 it was sought to make out the return as follows :—

Year 1903	...	...	...	Profit	£10,000
„ 1904	...	...	...	„	5,000
					15,000
„ 1905	Loss	...	...	£40,000	
	Less Recovered			20,000	
					20,000
Net loss					5,000
Average loss					£1,666

and it was sought to set off A.'s share, £833, against the profit of his private business (under Section 101). The matter went to the Board, who ruled that this was an attempt to set off B.'s share of loss against A.'s profits, and that the return must be divided as follows :—

Year 1903	...	½ Profit	...	...	A.	£5,000	...	B.	£5,000
„ 1904	...	„	...	...	2,500	...	2,500		
					7,500		7,500		
„ 1905	...	½ Loss	...	...				20,000	
		„ (the same having been repaid)	...		Nil				
Profit					£7,500	Loss	£12,500		
Average	...	⅓rd	...	...	£2,500		Nil		

In the case actually submitted a loss in the earliest year created a small average loss to A., which was allowed as a set-off, but it naturally follows that, if the mode adopted by the Board is correct, an average profit (as above) should result in an assessment upon A. It is difficult, however, to see how this would be justified in the face of the rule that a partnership is to be assessed jointly, except for the purposes of abatement, &c. (*post*).

Return by partner after claim under Act of 1890.

Where a partner of a firm claims relief in respect of "earned income" (see *post*), Form 38 is to be filled up (see Chapter IX).

If the business has been commenced within the three years, the amount to return should be arrived at as follows:—

Average where business set up within three years.

(Say) Profit for the 8 months ended 5th	
April 1910	£1,600
Profit for the 12 months ended 5th	
April 1911	3,000
Profit for 20 months	£4,600
Average annual profit for 1911-12 ...	<u>£2,760</u>

Or (say) Profit for the 8 months ended 5th	
April, 1909	£1,600
Profit for the 12 months ended 5th	
April 1910	3,000
Profit for the 12 months ended 5th	
April 1911	2,600
Profit for 32 months	£7,200
. Average annual profit for 1911-12 ...	<u>£2,700</u>

New business
commenced
within year of
assessment.

The assessment of a new business is sometimes a matter of difficulty. Assume a business to be commenced 5th October 1910, and the accounts to be made up in the first case to 31st March 1911, and so on half-yearly. In the ordinary course the assessment for 1910-11 would be on the profit of the period from October 1910 to March 1911 and the assessment for 1911-12 would be on the same basis—viz., double that amount. It may, however, be the case that the business is one doing a season's trade, in which case, if that period happened to be the season, the proprietor might argue that he should not be assessed on double the amount for the next year, and *per contra* the Surveyor might take up similar ground if the season were March to October. There is not anything definite in the Acts to guide us, and the Commissioners differ in their views.

The first rule of the first case reads :—

“The duty to be charged in respect thereof shall be computed on a sum not less than the full amount of the balance of the profits or gains of such trade, manufacture, adventure, or concern, upon a fair and just average of three years, ending on such day of the year immediately preceding the year of assessment on which the accounts of the said trade, manufacture, adventure, or concern shall have been usually made up, or on the fifth day of April preceding the year of assessment. . . .

“Provided always that in cases where the trade, manufacture, adventure, or concern shall have been set up and commenced within the said period of three years, the computation shall be made for one year on the average of the balance of the profits and gains from the period of first setting up the same. . . .”

It has been argued that the second paragraph does not limit the assessment to an average based on the results of the period prior to 5th April, and that if a concern commences business 30th June 1910, and makes up annually, the assessment for 1912-13 should be on the average annual profit of the two years up to 30th June 1912. Again, we are informed that the Commissioners in London in dealing with a new business assess each year on the profits of that year until a three years' average can be obtained. However equitable this latter method may be, it is clearly not in conformity with the Act (above). The other point is not so clear, but we think that the first part of the rule should be read into the second part, and that the period should not over-lap into the year of assessment, and that in the case suggested the assessment for 1912-13 should be on the profits of the year up to 30th June 1911.

New Business.

**Practice of
Commissioners
in London.**

As to a right of appeal at the end of any of the first three years, see *post*.

Where the trading of a company results in an average annual loss, or a profit not equal to debenture interest and chief rent paid, the amount of such interest and chief rent (less the amount of the assessment to Schedule A) must be returned for assessment to Schedule D, the tax thereon having been deducted by the company simply as collectors for the Revenue.

**Amount to
return where
accounts show
an average
loss.**

Similarly, a person trading with borrowed money, and who makes a loss or a profit not equal to the interest thereon, must

return the interest for assessment, unless he has private taxed income equal to such interest or the balance thereof.

Set off against interest.

In a case in practice, a company (lessees), who paid £3,000 for rent and were assessed under Schedule A at £3,500, made a loss, and therefore became liable to pay on debenture interest as above. The question arose whether they could set off the difference of £500 against such interest. The authorities took a liberal view, and allowed the set-off, not drawing any distinction between a company as lessees and owner-occupiers.

How assessment is made.

The form having been returned to the surveyor or assessor, an assessment is made by the Commissioners, of which due notice is given, and if, for any reason, the person charged is not satisfied with the assessment made upon him, he can appeal (see Part III. of this chapter). The tax is payable in one sum on the 1st January (1880, sec. 82), except in the case of tax under Schedule D charged on English and Irish railways, when it is to be paid by four quarterly payments, on the 20th June, 20th September, 20th December, and 20th March, during the year of assessment (1880, sec. 95).

When tax payable.

Discount at the rate of $2\frac{1}{2}$ per cent. per annum is allowed on tax paid in advance, viz., before 1st January (1842, sec. 141; 1889, sec. 10).

Making the assessment.

All returns of profits (Form No. 11) under this schedule (except returns to be assessed by the Special Commissioners) are to be laid before the Additional Commissioners, or the Commissioners for General Purposes acting as Additional Commissioners, who make the assessments (1842, sec. 111).

If they are not satisfied with any return made, or in case there has not been any return made, they make an assessment of such sum as, to the best of their knowledge, represents the profits chargeable (1842, sec. 113).

If no return,
or return not
satisfactory.

The case of *Maughan v. Edinburgh and District Water Trust* (Court of Session, Scotland, 2nd July 1886) is superseded by the provisions of the Finance Act, 1907, sec. 23. This section is as follows :—

(1) Notwithstanding anything in an Acte concerning Informers, being chapter five of the Acts of the thirty-first year of the reign of Queen Elizabeth, or in subsection (4) of section twenty-one of the Taxes Management Act 1880, or in subsection (2) of section twenty-two of the Inland Revenue Regulation Act 1890 (p. 135), or in any other enactment, proceedings for the recovery of any fine or penalty incurred under the Income Tax Acts may be commenced within three years next after the fine or penalty is incurred.

Further
assessments
and penalties.

(2) The time during which an assessment may be amended or an additional first assessment made under section fifty-two of the Taxes Management Act 1880 (which relates to the amendment of assessments), or during which an assessment may be made on the estate of a deceased person under section twenty-four of the Customs and Inland Revenue Act 1890 (which relates to the power to make such assessments), shall be any time within the year of assessment or within three years after the expiration thereof, and the time during which in cases of omission to charge any person a charge may be made and allowed or signed under section sixty-three of the Taxes Management Act 1880 (which relates to the powers of surveyors to make such charges), shall be a period of three years after the expiration of the year for which the person ought to have been charged.

*(3) Nothing in this section shall affect proceedings for the recovery of fines or penalties incurred before the commencement of this Act, or extend the time during which any assessment may be made or amended, or a charge may be made on any person in respect of income tax charged under any Act passed before the commencement of this Act.

*The question of penalties is dealt with on pp. 134-5.

Put briefly, the right to make further assessments under the Act of 1880, secs. 52 and 63, was limited as follows:—

Profits not assessed at all might be assessed within twelve months of the end of the year.

An *additional* assessment on profits only partially assessed had to be made within four months of the end of the year.

**Wear and
tear.**

Rate allowed.

The practice as to allowance for wear and tear is that, where renewals are provided out of revenue and the amount is charged against the trading for income tax purposes, there will not be any wear and tear allowed; but, where renewals are provided out of capital, wear and tear will be allowed.

**Machinery
sold to new
company at
more than
book value.**

It frequently happens, on an existing business being floated as a company, that the machinery is valued at a greater price than that at which it has previously stood in the books. In such a case, the purchaser, of course, desires to have an allowance for depreciation on the new figure. The almost invariable practice of the authorities is only to allow wear and tear upon the figure at which the machinery last stood for income tax purposes. Presumably, the view taken is that, consciously or unconsciously, the valuation includes goodwill, and there is considerable weight in the argument.

In an appeal in this connection the appellant is bound to admit that the rise in value is due either:—

- (a) To a rise in the market value of the machinery;
- (b) To an over-allowance for wear and tear in the past; or
- (c) To the machinery having been improved in value by material used and work done to it by workmen, all charge for which has been debited to Revenue.

But against this it may be urged that the fact of the seller having paid less tax than he should have done is no reason why the purchaser should have to pay more than his due.

**Wear and
tear.**

The following memorial as to depreciation of machinery was addressed to the Chancellor of the Exchequer in 1897 :—

**Memorial to
Chancellor of
Exchequer.**

INCOME TAX ALLOWANCES.

To the Right Hon. Sir MICHAEL HICKS BEACH, Bart., M.P.,
Chancellor of the Exchequer.

The Memorial of the Association of Chambers of Commerce
of the United Kingdom.

Sheweth :—

That the present system of allowances for depreciation of machinery for Income Tax Assessments, and the absence of any allowance for obsolete machinery, is a great hardship to the manufacturing industries of this country, inasmuch as it amounts to an additional tax.

That owing to the present spirit of invention, machines become obsolete much more quickly than formerly, and even when not obsolete their value diminishes very rapidly. Those who are amongst the first to purchase new machines pay a very heavy premium upon them as compared with those who purchase them later, and it not infrequently happens that after using them for a year or two, they would be able to buy superior machinery of the same class for half the original price. In such a case, unless the old machines have been heavily depreciated, the anomaly would remain that the manufacturer had old machinery taken in stock at a higher price than superior new machinery of the same class would cost.

That machinery is now worked at such a high speed that it wears out much sooner than formerly, and consequently must be more rapidly depreciated.

That these conditions, whilst applying to all users of machinery, are especially applicable to the two principal industries of Leicester—namely, the boot and shoe and hosiery trades, where machines are rapidly superseded by new inventions, and are frequently obsolete in a very few years.

**Wear and
tear.****Memorial to
Chancellor of
Exchequer.**

That, according to the law, Income Tax Assessors have no power to make any allowances for obsolete machinery, and in justice to manufacturers it is highly desirable the law should be altered so as to permit such allowances.

That the deduction as at present admitted—namely, a small percentage upon the value of machinery at each stocktaking, is not on a proper basis, inasmuch as with a depreciation of 5 per cent. per annum on this basis, £1,000 worth of machinery stands at £128 10s. 3d. after 40 years, and at a depreciation of 7½ per cent. stands at £44 4s. 7d. after the same period.

That the allowance of a small percentage for depreciation only benefits the departments in the early years, as after the eleventh year the amount upon which it is allowed is so much greater at the 7½ than the 10 per cent. scale that from that time forward the amount allowed on the 7½ per cent. scale is the largest, and the same occurs between the 7½ and 5 per cent. scales after the sixteenth year.

That the allowance for depreciation on the annual stocktaking value instead of upon the original value of machinery practically speaking never extinguishes this from the nominal assets of the firm.

That no prudent manufacturer would take stock of his machinery on the principle adopted by Income Tax Assessors, and is he therefore obliged to take stock twice, once for his own information, and again specially for the assessors.

That the amount expended in repairing machinery so as to keep it in workable condition should be allowed to be deducted in full for Income Tax Assessments. These repairs are absolutely necessary to keep the machinery of any value at all, and if it is disposed of as second-hand does not prevent a serious depreciation, equalling or even exceeding anything likely to be deducted for stocktaking, whilst when the machines become obsolete they are, of course, totally lost.

That the result of the present system of depreciating machinery for income tax assessments is calculated to foster commercial immorality by inducing manufacturers to show a fictitious capital in their books in the Machinery Account. Instances are numerous where manufacturers, apparently solvent from this cause, have continued to carry on business for years after being insolvent with disastrous results. The absence of an allowance for obsolete machinery also fosters the spirit of false declarations which it is most important should be avoided.

That, as the income tax purports to be an impost levied upon the actual income received, Her Majesty's Government be urged in the interests of the commercial community who already pay their fair share of all taxes, to take the necessary steps to remedy the anomalies above mentioned.

Wear and tear.

Memorial to Chancellor of Exchequer.

Given under the Common Seal of this Association, the
1st day of April 1897.

And his reply was as follows :—

TREASURY CHAMBERS,
WHITEHALL, S.W.

Reply of Chancellor.

May 28th 1897.

DEAR SIR,

The Chancellor of the Exchequer has had under his consideration the Memorial of the Association of the Chambers of Commerce of the United Kingdom, which you sent him at the beginning of April.

The chief points raised in the memorial are as follows :—

- (1) That the allowances in respect of repairs and depreciation of machinery are insufficient, and the methods of calculating such depreciation are unsatisfactory.
- (2) That no allowance is made for the cost of replacing machinery which has become obsolete.

As to the first point, I am to say that, as the law now stands, deductions are allowed both in respect of expenditure incurred in repairs or alterations of machinery according to an average of the three years preceding the year of assessment, and also in respect of the diminished value of machinery by reason of wear and tear during the year. The allowance of these deductions is in the hands of the District or Special Commissioners, as the case may be, and they have to decide in each case as it arises the adequacy of the deductions allowed.

As to the second point, I am to say that the Board of Inland Revenue have given instructions to their surveyor at Leicester, which is particularly referred to in the memorial, that, where a claim is made in respect of the introduction of more modern machinery in a factory, no objection is to be taken to the allowance, as a deduction from the assessable profits of the year, of so much of the cost of replacement as is represented by the existing value of the machinery

**Wear and
tear.**

**Reply of
Chancellor.**

replaced. Any excess in the cost of the new machinery over the actual present value of the old is an addition to the capital of the business, and cannot properly be regarded as a charge upon revenue for the purposes of income tax assessment.

I am to add that similar instructions will be given to surveyors in other districts when this question arises there.

I am, Sir,

Your obedient servant,

W. A. MOUNT.

THE SECRETARY,

ASSOCIATION OF CHAMBERS OF COMMERCE.

Concession.

This would appear to be a distinct concession to the taxpayer, as the Act of 1878 only provided for an allowance in respect of diminished value *by reason of wear and tear*; whereas this sanctions an allowance for the supersession of obsolete machinery by reason of improvements, &c. This is equivalent to charging all renewals to revenue and not having any depreciation allowance, which method is supported by surveyors of experience, both in respect of machinery and of wagons.

**Method of
arriving at
same.**

The allowance for wear and tear is made off the *average profits* after that average has been ascertained. The amount charged in the accounts should always be written back to credit, and the deduction claimed off the average. (*Cunard S.S. v. Coulson (post).*) This is so even if the rate allowed is the same as that charged in the accounts, for the allowance is for wear and tear *for the year succeeding those on which the profit is based*, and is on the machinery figure standing as at the commencement of the year. Thus, if the Machinery Account be :—

Amount as at 31st March 1910	...	...	...	...	£ 20,000	Wear and tear.
Additions to March 1911	...	...	...	...	1,100	Method of arriving at same.
					<u>21,100</u>	
Less Depreciation	...	...	...	...	2,000	
					<u>£19,100</u>	

The amount on which depreciation is allowed is—

Amount at 31st March 1910 for Income Tax purposes	...	£ 25,000
This will usually be greater than the book figure, as there will probably not have been so much allowed as has been written off.		
Less Depreciation allowed for 1910-11	...	1,875
		<u>23,125</u>
Additions	...	1,100
		<u>£24,225</u>
Amount on which Depreciation will be allowed for 1911-12		

The following important provision is contained in the Act of 1907, sec. 26 :—

Cumulative wear and tear.

(1) For the purpose of enabling deductions for wear and tear to be allowed by the additional Commissioners, claims in respect of those deductions shall be included in the annual statement required to be delivered under the Income Tax Acts of the profits or gains of the concern for the purpose of which the machinery or plant is used, and the additional Commissioners in assessing those profits and gains shall make such allowances in respect of those claims as they think just and reasonable.

(2) No deduction for wear and tear or repayment on account of any such deduction shall be allowed in any year if the deduction when added to the deductions allowed on that account in any previous years to the person by whom the concern is carried on will make the aggregate amount of the deductions exceed the actual cost to that person of the machinery or plant, including in that actual cost any expenditure in the nature of capital expenditure on the machinery or plant by way of renewal, improvement, or reinstatement.

**Wear and
tear.**

**Cumulative
wear and tear.**

(3) Where as respects any trade, manufacture, adventure, or concern full effect cannot be given to the deduction for wear and tear in any year owing to there being no profits or gains chargeable with income tax in that year, or owing to the profits or gains so chargeable being less than the deduction, the deduction or part of the deduction to which effect has not been given, as the case may be, shall, for the purpose of making the assessment for the following year be added to the amount of the deduction for wear and tear for that year and deemed to be part of that deduction, or if there is no such deduction for that year, be deemed to be the deduction for that year, and so on for succeeding years.

(4) In this section the expression "deduction for wear and tear" means the deduction allowed, or which would be allowed, under section twelve of the Customs and Inland Revenue Act 1878, as representing the diminished value, by reason of wear and tear during the year, of machinery or plant used for the purposes of any trade, manufacture, adventure, or concern.

Though subsec. (2) would prevent an allowance such as was upheld in *Hall v. Rickman* (*post*), it would obviously not prevent a *new owner* having depreciation, in view of the words "allowed . . . to the person by whom the concern is carried on."

Subsec. (3) would not appear to give any right to use unexhausted depreciation for any year prior to 1907-8—the expression "cannot be given" would not apparently cover past years.

**Cunard S.S.
Co. v.
Coulson.**

**Wear and tear
is to be for
the year.**

In *Cunard S.S. Co., Lim. v. Coulson* (Queen's Bench Division, 20th March 1899) the Court held that it was quite clear under the Act that the depreciation to be allowed was *for the year*, and that it was first necessary to ascertain the average profit before deduction for depreciation, and then to

deduct the amount allowed; and the company's claim to be assessed on the average of three years' net profits (after deduction of depreciation) was disallowed.

Wear and tear.

Where machinery or plant is let to a person, and such person has undertaken to maintain it and deliver it over in good condition, he is entitled to deduction for wear and tear as if he were the owner. Where, however, the burden of maintaining and restoring it falls on the owner, he is entitled to repayment of tax on such an amount as the Commissioners consider just and reasonable as representing the diminished value of the machinery, &c., by reason of wear and tear. The claim is to be made within twelve months after the expiration of the year of assessment (Act of 1878, *ante*).

Machinery, &c., let.

An important question arises in such a case as that of a financial company, where the tax-paid income received, and debenture interest paid, vary from year to year. On what principle is the assessment to be made? Several methods have been suggested :—

**Financial company.
How amount to return arrived at.**

1st.—To take one-third of the profit for the three years as per the Profit and Loss Accounts (after elimination of deductions not allowed, other than interest, *e.g.*, income tax), then add the estimated debenture interest paid, and deduct the estimated tax-paid income received for the year of assessment.

First method suggested.

2nd.—To take one-third of the profit for the three years, eliminating debenture interest paid and tax-paid income received.

Second method.

Third method.

3rd.—To take one-third of the total of the net profit and debenture interest for the three years, including tax-paid income received, and then to deduct tax-paid income for the year of assessment.

It is obvious that if the debenture interest paid, and tax-paid income received, are respectively about the same in each of the three years brought into average, the difference in result by each of the three methods will be only slight. But where they vary considerably, as would probably be the case during the earlier years of a company's existence, it becomes important to determine on which basis the accounts are to be prepared. Annexed is a summary Profit and Loss Account of a financial company for the three years ended 31st December 1910. During the year 1908 the profits are derived in such a manner that a comparatively small amount is taxed at its source, and they have very little debenture interest to pay, but in subsequent years they raise more money by way of debentures, and, that money being invested, more of the income is taxed by way of deduction. This causes a striking difference in the amount for return to assessment as prepared in the three modes, viz. :—

**Difference
in result of
various
methods.**

Year ending	Profit per the Profit and Loss Account after adjust- ment, except in respect of Interest	Add Interest paid on Debentures	Total of Profit and Interest	Deduct Tax-paid Income received	Balance of Profit after eliminating tax-paid Income received and Interest on Debentures paid
	£ s d	£ s d	£ s d	£ s d	£ s d
31st Dec. 1908	36,000 0 0	600 0 0	36,600 0 0	3,000 0 0	33,600 0 0
31st Dec. 1909	30,000 0 0	12,000 0 0	42,000 0 0	18,000 0 0	24,000 0 0
31st Dec. 1910	24,000 0 0	24,000 0 0	48,000 0 0	45,000 0 0	3,000 0 0
	£90,000 0 0	£36,600 0 0	£126,600 0 0	£66,000 0 0	£60,600 0 0

*1st Method.***Result if first
method
adopted.**

Profit for three years as per the Profit and Loss Account	£90,000
Average	£30,000
Add estimated debenture interest for year of assessment (say, as in 1910) ...	24,000
	£54,000
Deduct tax-paid income for year of assess- ment (say, as in 1910)	45,000
Amount for return to assessment ...	£9,000

*2nd Method.***Result if
second
method
adopted.**

Profit for three years, omitting debenture interest and tax-paid income	£60,600
Amount for return to assessment, $\frac{1}{3}$ rd thereof	£20,200

*3rd Method.***Result if
third method
adopted.**

Profit and debenture interest for the three years, including tax-paid income ...	£126,600
Average	£42,200
Deduct tax-paid income for the year of assessment	45,000
Tax overpaid on	£2,800

At first glance
first method
seems the
correct one.

Arguments in
favour of it.

At the first glance the first method seems the correct one. The fact of some of its income having been received after deduction of tax, and of the company itself having retained tax on some of the interest paid by it, should not make any difference in the amount of their profits for income tax purposes.

The company made ...	...	...	...	£30,000
on which they should pay tax.				

They estimate that they will, during the				
year, collect tax on	...	...	...	24,000

Making a total of	£54,000
-------------------	---------

On the other hand, they expect to pay, by				
way of deduction, tax on	...	...	...	45,000

and it seems a good argument to say they				
should now pay on	...	...	...	<u>£9,000</u>

This view is supported if we consider that the debenture interest is really assessed upon the debenture-holders separately, the Revenue being merely assisted in the collection of the tax by the company deducting it from the debenture-holders; and that the tax-paid income received is assessed at the source for the same reason. Such tax-paid income is, nevertheless, income of the company in the course of their business, the company being formed for the special purpose of making a profit consisting of the difference between what the capital and borrowed money of the company can be employed at, and the amount of interest, &c., payable for such capital and borrowed money. In further support of this view it was held in the *Forth Bridge* case (p. 70), that the

interest upon which the tax had to be paid was not the interest for the year prior to the year of assessment, but was the interest for *the year of assessment*.

But the Surveyors and the authorities at Somerset House contend that the return must be made up in the second method. They resist a claim to arrive at the amount for assessment on any other principle than that of excluding debenture interest paid and tax-paid income received, as in the ordinary case of excluding interest payable by a trading company. The principle must be considered apart from its effect in individual cases. In the instance given it operates in favour of the Revenue, but in other cases it might be the reverse. The reasons given in support of this view of the authorities are:—

**Second method
should be
adopted.**

**Reasons for
adopting
second method
examined.**

(1) That interest of money is chargeable separately as a distinct head of income, quite apart from all other income (1853, sec. 2, Schedule D, 3rd clause)

(2) That where interest is payable out of profits the person receiving the interest is not to be taxed, but the assessment is to be made on the whole profits without distinguishing such interest (1842, sec. 102).

It seems a good reply to the second contention to say that the interest is not payable *out of profits*, but that the profits are *not ascertained until* such interest has been provided for. The first contention, however, seems to follow the ruling in

**Reasons for
adopting
second method
examined.**

Clerical, General, &c., Assurance Society v. Carter.

Assessment of life assurance company.

Must pay on interest received, irrespective of amount of profit.

the case of *Clerical, Medical, and General Life Assurance Society v. Carter* (*Surveyor of Taxes*), heard before the Court of Appeal on the 16th February 1889, and which decided an important question as to the returns of life assurance companies. The society had paid tax by way of deduction on £107,000, interest on investments. They received a further sum of interest, amounting to £165, from which tax had not been deducted. The profit of the society only amounted to £74,600. The Crown claimed to assess the sum of £165, and the society resisted on the ground that they had already paid tax on more than their total profit. The Court decided in favour of the Crown. Lord Esher said that in the Act of 1842 there was not any such section as section 1 of the Act of 1853, which dealt with interest as a distinct subject of taxation. This seemed to point to an intention to alter the law. Then in Schedule D came the words that the duties were made payable “for and in respect of all interest of money.” Looking at these plain words he could not see his way to limiting them to interest made in a trade or business. The words must be read in their ordinary sense, and duty would be chargeable.

Edinburgh Life Insurance case.

Following the result of their application under sec. 23 of the Act of 1890 (*post* Chapter VI.), the Edinburgh Life Insurance Co. claimed (*Revell v. Edinburgh Life Insurance Co.*, Court of Session, Scotland, 28th June 1906) that, as it had been held in a prior application under the Act of 1890 that taxed interest must be included, they should not now be called upon to pay on untaxed interest, the former having (as in the *Clerical* case), largely exceeded their profit.

The Court gave judgment for the Crown, holding that the claim under the Act of 1890 could not affect the question.

In *Glamorgan Quarter Sessions v. Wilson* (K.B.D., 8th March 1910) the question was raised as to the liability to tax in respect of bank interest on moneys in the hands of the licensing authority.

***Glamorgan
Quarter
Sessions v.
Wilson.***

The Court held that the amount was assessable; that the Act of 1888 gave an additional remedy to the Crown, and that even if the bankers should have deducted the tax that did not prevent the Crown recovering it from the recipient.

The question has been raised in practice whether a company which issues debentures for interest in lieu of payment thereof in cash should pay tax on the *full amount* of the interest, though the debentures may not be negotiable at par. In such cases we believe that tax has been required to be paid in full. This seems the most convenient method to adopt, as all such debentures will, no doubt, become repayable at par at some future date, and if tax were not paid on the par value it would involve an adjustment at a distant date, and, in many cases, from a person not the original holder of the debenture.

**Debentures
issued for
interest.**

**Deduction of
tax on
nominal
amount.**

But where preference shares were so issued to the Manchester Corporation in respect of debenture interest due by the Manchester Ship Canal, the Corporation were successful before the Commissioners (1907) in their contention that they should only pay on the market value of such shares (55 $\frac{3}{4}$ per cent.).

**Preference
shares issued
for interest.**

Paper issued
in lieu of
preference
dividend.

The position in respect of paper issued in lieu of arrears of *preference dividend* is even stronger than that in respect of paper issued in lieu of *debenture interest*. In the one case the claim of the Crown arises under the Act of 1888 in respect of interest and annuities (practically) paid, but not paid out of profits. In the case of preference dividend, however, the right of the Crown can only be for tax on profits (the Act not applying to *dividends*), and where there have not been any profits surely a claim could not be established. This view is supported by the fact that the Crown abandoned such a claim (without any legal action) which they had preferred against the Entre Rios Railways Co., Lim., in 1905.

*Scottish
Mortgage,
&c., Co. v.
McKelvie.*

Financial
company
receiving
interest
abroad may
be assessed
under either
first or
fourth case.

In *The Scottish Mortgage and Land Investment Company of New Mexico, Lim. v. McKelvie* (Court of Session, Scotland, 19th November 1886) the facts were that the company was formed for the purpose of borrowing money here and lending it abroad. The Profit and Loss Account was as follows :—

Cr.

Interest of money, received				
in the United States	...	£6,926	5	2
Transfer fees	...	...	2	12 6
				£6,928 17 8

Dr.

Management expenses in				
the States	...	£1,193	5	10
Management expenses at				
home	...	...	562	0 7
				1,755 6 5
Balance				£5,173 11 3

This was applied as follows:—

Interest on debentures ...	£3,094	18	1
Dividend to Shareholders...	700	0	0
To extinguish debit balance,			
1883	499	10	7
Preliminary expenses ...	508	5	5
Carried to next year ...	370	17	2
	<u>£5,173 11 3</u>		

Scottish Mortgage &c. Co. v. McKelvie.

Financial company receiving interest abroad may be assessed under either first or fourth case.

The interest received in the States was not actually remitted to this country, but it was entered in the books, and when money was raised here for the purpose of lending there, a corresponding amount was retained, and the dividend, &c., paid out of it.

The Surveyor contended that the interest was, in effect, received here, and he sought to assess the company under the fourth case of Schedule D (charging interest arising from foreign securities upon the full amount received in the United Kingdom—without any deduction).

The company claimed that they should be assessed under the first case of Schedule D (charging the profits of trades, &c.) in respect of their trade of bankers, &c.; or, alternatively, that if they were assessable under the fourth case it could only be on interest actually received in the United Kingdom, and that there had not been any received.

The Court held that, with the exception of the balance carried forward, the interest was in effect received here. If, in the process of bookkeeping, it had not been converted into

Scottish Mortgage, &c., Co. v. McKelvie.

Financial company receiving interest abroad may be assessed under either first or fourth case.

income, then the payments made out of that money were payments out of capital, and illegal. They had entered it in their books as interest, and paid it away as such. The company might fall either under the first or the fourth case, and, that being so, the Commissioners might choose the more favourable to themselves. See, however, *Norwich Union Fire Insurance Company v. Magee* (p. 195). They did not see why the expenses at home had been allowed as a deduction, but the Inland Revenue had allowed them, and the company would therefore have the benefit

Smiles v. Northern Investment Company of New Zealand, Lim., following Scottish Mortgage and Land Investment Co. v. McKelvie.

In *Smiles (Surveyor of Taxes) v. The Northern Investment Company of New Zealand, Lim.*, it was held by the Court of Session, Scotland (31st May 1887), following *The Scottish Mortgage and Land Investment Company of New Mexico, Lim., v. McKelvie*, that a company carrying on the business of borrowing money in this country and investing it abroad, could be assessed either under the first or fourth case of Schedule D. In this case the company had been assessed under the first case from 1880 (the year of incorporation) up to and including the year 1885-86; and it was for this last year that the Commissioners surcharged them on the difference between the profit as originally assessed under the first case, and what it amounted to under the fourth case. This was upheld by the Court.

Lord Mure said :—

“ I see no other course. The case is specifically mentioned as the fourth case in Schedule D of section 100 of the Act; and that is what we decided substantially in the case of the Mexican Company. It is desirable that uniformity of decision should be

kept up in these sort of cases, even if it was possible that there was alternative power to take it under the rules in the first case; but here it has been actually decided in a case substantially the same that it should be under the fourth case, and I think there should be uniformity, and that the Commissioners are wrong in departing from that rule."

In *Smiles (Surveyor of Taxes) v. The Australasian Mortgage and Agency Company, Lim.*, a Scottish limited company carried on business as wool-brokers in Australia, and made advances of money, the interest accruing being of fluctuating amounts. It was held by the Court of Session, Scotland, 12th July 1888 (distinguishing *Scottish Mortgage and Land Investment Company of New Mexico, Lim.*, and *Northern Investment Company of New Zealand, Lim.*), that the company should be assessed under the first case in respect of its whole profits, including interest received from its investments in foreign and colonial securities; and that it was not separately chargeable for interest under one rule and profits under another.

Smiles v. Australasian Mortgage and Agency Co., Lim., distinguishing *Scottish Mortgage and Land Investment Co. v. McKeivie*, and *Smiles v. Northern Investment Co. of New Zealand, Lim.*

The Court were very strong in their judgment that the cases were absolutely distinct. The fourth case was, they considered, to meet the case of an *investment* abroad.

In *Last v. London Assurance Corporation* (Queen's Bench Division, 14th March, 1884) it was held :—

Last v. London Assurance Corporation.

- (1) That the profits of the three branches of the company's business (fire, life, and marine) were to be treated as a whole, and not dealt with as three separate businesses; and

Mode of ascertaining profit.

*Last v.
London
Assurance
Corporation.*

*Mode of
ascertaining
profit.*

- (2) That the profits of the life department for income tax purposes were to be arrived at by the usual quinquennial valuation, as, since each year's premium had relation to the whole duration of the life or risk, it could not be said that the profit or loss in any one year was the difference between the premiums received and the claims paid.

In this case a further point was raised (and ultimately carried to the House of Lords) as to whether bonuses paid or credited to participating policy-holders were liable to assessment. (See Part I. of this chapter, p. 98.)

*Insurance
Companies v.
Surveyor of
Taxes.*

*Fire and Life
Insurance Co.*

*Mode of
ascertaining
profit.*

In the

*Scottish Union and National Insurance
Company,*

*North British and Mercantile Insurance
Company,*

*Northern Assurance Company, and
Scottish Provincial Assurance Com-
pany,*

v.

Surveyor of Taxes,

heard before the Court of Session, Scotland, 8th February 1889, the following rules were laid down with respect to the mode of ascertaining the profit chargeable in the case of an insurance company carrying on both fire and life business :—

- (1) The net profits from both branches to be massed together, and the company to be assessed under the first rule of Schedule D (charging duty in respect of any trade, manufacture, adventure, or concern in the

nature of trade). This followed *Smiles v. The Australasian Mortgage and Agency Company, Lim.*, as contrasted with *The Scottish Mortgage and Land Investment Company of New Mexico, Lim. v. McKelvie*.

Insurance Companies v. Surveyor of Taxes.

Fire and Life Insurance Co.

Mode of ascertaining profit.

- (2) Interest on investments received without deduction of tax to be taken into account.
- (3) As fire policy contracts are usually for one year only, the premiums received for the year, or average of three years after deduction of losses and expenses during the period, may fairly be taken as the profit of the fire department, without any allowance for risks unexpired. (See *The Imperial Fire Insurance Company v. Wilson*, the *General Accident* case, and the *Sun* case, *post*.)
- (4) The profit of the life department, on the other hand, to be obtained by actuarial calculation.
- (5) Profit on investments realised to be brought into account.

In the case of *Scottish Investment Trust Company, Lim. v. Forbes*, the company claimed that they should not be assessed to income tax on "profits on sales of securities during the year." In the books of the company these profits were written off against depreciation in the book value of other investments. They maintained that varying their investments was incidental to, but not one of, the real objects of the com-

Scottish Investment Trust Co. v. Inland Revenue, following Northern Assurance Co. v. Surveyor of Taxes.

Profit on sale of securities.

Scottish Investment Trust Co. v. Inland Revenue, following Northern Assurance Co. v. Surveyor of Taxes.

Profit on sale of securities.

pany, and that any profit derived therefrom was not divisible among the shareholders, but went to equalise any loss on the capital, which was to be treated as a whole.

The Court of Session, Scotland, held (12th December 1893), following *Northern Assurance Company v. Surveyor of Taxes* (p. 190), that the sum in question was truly profits, and was subject to income tax, and that its application by the company was immaterial.

It will be noticed that these two decisions recognise the principle that profits and losses on the *realisation* of investments made as part of the business of a concern are to be brought into account.

Depreciation in value of securities.

In the *Scottish Investment Trust* case it was shown that the depreciation in the value of the investments was permanent, and the decision, in effect, therefore, lays down the rule that, in the case of a *pure investment trust*—as this company was—a permanent depreciation in market value is to be disregarded for income tax purposes. It is not *absolutely clear* that a permanent depreciation in the value of an investment could never be taken into account, but the weight of authority supports such a view, and, in any case, it would be exceedingly complicated to allow one class of depreciation and not another; also the question of *appreciation* would have to enter into account if depreciation were seriously asked for. It also seems fairly clear that a surplus or deficiency on sale of premises (even in the case of a bank or insurance company) is not a profit or loss for income tax purposes.

In *Forbes v. Scottish Provident Institution*, and *Forbes v. Scottish Widows' Fund and Life Assurance Society*, the facts were as follows. These societies (which are both mutual) lend out sums of money in Australia at interest. The interest accruing is not remitted to the United Kingdom specifically, but is retained abroad and invested. (In the latter-named case, part of the interest was applied to cover the expenses of the office in Sydney.) The interest is, however, entered in the Revenue Account of the society. The insurance business is entirely a home one, and the agencies outside the United Kingdom are purely for the purposes of investment of its funds. The companies contended that the interest had not been received in the United Kingdom, and that, as they fell to be assessed under the fourth case of Schedule D (charging interest arising from foreign securities upon the full amount received in the United Kingdom), there was not any tax payable thereon. The Surveyor desired to assess the interest under the first case (charging profits), or as "yearly interest" under sec. 102, and argued that, even if the claim came under the fourth case, there was a constructive remittance and the amount was chargeable. The claim under the first case was ultimately abandoned by the Crown, but only on the ground of it being considered that the facts stated in the cases were not sufficient. Judgment was given in the Court of Session, Scotland, 17th December 1895. The Court said the claim of the Crown rested alternatively on sec. 102 of the Act of 1842 and the fourth case of Schedule D. The argument under sec. 102

Forbes v. Scottish Provident Institution, &c.

Interest received and retained abroad.

Forbes v. Scottish Provident Institution, &c.

Interest received and retained abroad.

Sec. 102 not a charging section.

Not a constructive remittance.

was admittedly novel, and involved surprising consequences. It amounted to contending that the section subjected to duty *all* interest, disregarding the distinction drawn in Case IV. (the only case dealing with income from foreign securities) between what is received here and what is only received abroad; in other words, that it subjected to tax a class of profits, &c. (*i.e.*, foreign income not remitted here), not included in Schedules A, B, C, D, or E. The answer to that argument was twofold. First, the actual statute under which duty was charged was the Customs and Inland Revenue Act 1893, which charged the profits, &c., charged under Schedules A, B, C, D, and E of the Act of 1853. If, then, sec. 102 charged profits, &c., not covered by the lettered schedules, it was not in force during 1893-4. It appeared, however, that sec. 102 never had that effect. It was so expressed as, in terms, to charge with duty, but the general words used were, in truth, introductory to the provisoes, and they were general because they were introductory, and, therefore, did not rehearse the limitations which had been already expressed.

The Court was, therefore, against the Crown on sec. 102.

They were likewise against them on Case IV. of Schedule D. The colonial interest, they said, was left where it was. There was not a constructive remittance. The fact of recording the amounts would never make interest "received in the United Kingdom." The *Scottish Mortgage Company of New Mexico v. McKelvie* (p. 186) was totally different. The

money there could only be said not to have been received if money sent home by bill is not received in this country, or if no colonial interests are received in the United Kingdom which do not reach it in specific form. This being the decision, it became unnecessary to decide whether the expenses of the Sydney office (in the *Scottish Widows' Fund* case) were legitimate deductions.

In *Norwich Union Fire Insurance Company v. Magee* (Queen's Bench Division, 13th and 14th January 1896) it was held that interest on American securities brought to account in the books of the company, but invested in America in American securities (in order to build up a reserve, as required by the laws of the United States), forms part of the profit of the company assessable under Case I. of Schedule D, and that the interest is in effect received in this country. Wright, J., said :—

*Norwich
Union Fire
Insurance Co.
v. Magee.*

Interest
received and
retained
abroad.

“If there is a trade which cannot be carried on without making investments abroad, the interest arising on the investments necessarily made for the purposes of the trade is, as it seems to me, part of the gains of that trade.”

With respect to the case of *Scottish Mortgage Company v. McKelvie*, he said :—

“The Scotch case of *McKelvie* has been referred to as an authority for saying that the Crown may elect under which case it will tax the subject. I doubt if it is an authority for that proposition to its full extent. It is, no doubt, an authority for the proposition that, if a particular company is clearly within Case IV., the Crown may tax it under Case IV., even though it may also be under Case I.; but I doubt whether it is an authority for the converse proposition altogether. I doubt

whether the Crown could always elect to tax under Case I., if the company were clearly under Case IV. I do not say whether it is so or not. I only say it seems to me doubtful whether the Scotch case decided the proposition which the Attorney-General has stated in its full entirety."

Universal Life Assurance Society v. Bishop, following New Mexico case.

In *Universal Life Assurance Society v. Bishop* (Queen's Bench Division, 23rd and 24th March, and 11th August 1899) the Court held that interest received in India and used *inter alia* for the payment of its obligations there was constructively remitted to England, and was therefore chargeable. The Court considered the facts fell within the *Scottish Mortgage Company of New Mexico v. McKelvie* and *Norwich Union Fire Insurance Company v. Magee*. That *Forbes v. Scottish Widows' Fund and Life Assurance Society* and *Forbes v. The Scottish Provident Institution* were distinguishable on the facts, as in neither of the latter cases was the interest received abroad treated in any division of profits (as was done in this case) as forming part of the divisible profits; it was simply retained and used abroad for purposes of loans and investment. See, however, the *Gresham* case, decided in the House of Lords (*post*).

Standard Life Assurance Co. v. Allan, following Scottish Provident case.

In the case of the *Standard Life Assurance Co. v. Allan* (7th and 8th March and 30th May 1901) the Court of Session, Scotland, considered the facts fell within *Forbes v. The Scottish Provident Institution*, where the Court, rightly, they considered, had held that there was not a constructive remittance to this country.

Scottish Provident Institution v. Allan (House of Lords, 30th April 1903) was another case where money was remitted to Australia for investment, and certain sums remitted to Scotland. The Court of Session had held (distinguishing *Scottish Provident Institution v. Forbes*, p. 193) that the interest was assessable.

*Scottish
Provident
Institution
v. Allan.*

**Constructive
remittance.**

The Lord President said :—

“ It appears to me that, under the circumstances, indefinite remittances to this country must be presumed to consist of interest, not of capital, so long as the amount of capital remitted to Australia for investment still remains invested there.”

The House of Lords affirmed the decision, approving of the above view.

So far as one can judge from the report of the case, it must have been a weak one to contest. For example, it was sought to allocate one sum of £25,000 as capital under the following circumstances. The amount was remitted to Australia for investment 21st May 1886; it was repaid 1st June 1891; on 1st February 1898 three sums of £25,000, £10,000, and £9,000 were remitted home. Accompanying the draft for £25,000 was the following statement :—

“ For your guidance in dealing with the Inland Revenue Department, the above amount represents proceeds of the draft of £25,000 drawn by the attorneys of the institution on 21st May 1886.”

*Scottish
Provident
Institution
v. Allan.*

*Constructive
remittance.*

The only item upon which the institution succeeded was a sum of £5,000 cabled direct to England in 1898 by one who had borrowed £70,000 in 1886. It was, perhaps, straining the law a little to decide against the institution that a sum of £28,000 remitted home on 16th November was not the same £28,000 as a similar amount which had been repaid on the 14th November.

The words of Lord Davey in the *London County Council* case seem to be particularly applicable to this case. "It is difficult to see how any account-keeping by the debtor could alter the rights of the Crown."

*Gresham Life
Assurance
Society v.
Bishop.*

*Interest must
be actually
received.*

The question of "constructive remittance" has been largely cleared up by the decision of the House of Lords in the case of *Gresham Life Assurance Society v. Bishop* (17th February, 3rd and 6th March, and 16th May 1902). Their Lordships were unanimously in favour of the Society, and held that the amount must be *actually received* here to render it liable to tax. The Lord Chancellor said:—

"The difficulty of identifying the actual sum is no limit on the enactment. . . . If the Legislature had intended that bringing it *into account* was to be equivalent to its being received, it would have been easy to say so."

Lord Macnaghten and Lord Shand both considered that the *New Mexico* case (*ante* p. 186) was rightly decided. Lord Brampton was not satisfied that this was so, but in any case considered it distinguishable. He said he did not like the expression "constructive" remittance; if a "constructive" receipt was the same as an *actual* receipt, there was no reason to use the word "constructive" at all; and if it meant

something different from, or short of, actual receipt, then it was not recognised by the statute, which, in using the word "received" alone, must be taken to have used it in its ordinary acceptance.

Gresham Life Assurance Society v. Bishop.

Interest must be actually received.

Lord Lindley considered that the cases of *Forbes v. Scottish Provident Institution* (ante p. 193) and *Standard Life Assurance Co.* (p. 196) were both right.

He considered the *New Mexico* case was distinguishable, but, assuming it not to be so, he thought it would be more correct to overrule it than to decide this appeal in favour of the Crown.

In the case of *The Scottish Widows' Fund and Life Assurance Society* (Court of Session, Scotland, 18th June 1909) it was held that where coupons were sent to America, cashed there, and the proceeds invested in bonds which were then transmitted here, the interest was not "received" here.

Scottish Widows' case.

Interest "received" here?

In *Liverpool and London and Globe Insurance Co. v. Bennett* it was sought to establish that dividends received and retained abroad were not part of their profits for income tax purposes.

Liverpool and London and Globe case.

Dividends are part of profit.

The Court held (K.B.D., 30th March 1911) that the investments were clearly made as part of the business of the company, and that their contention was untenable.

In view of the *Gresham* decision, the remarks of the Lord President (in the Court of Session) in the case of *Scottish Provident Institution v. Allan* are of importance.

Principle to apply.

Principle to
apply.

It may be noticed that the Scottish Provident Institution is purely a *home* business, and there are not any premiums received abroad. The actual application of the principle, particularly in the case of a company also carrying on a foreign business, may yet involve complication and difficulty. For example, see the case of the *Odessa Waterworks* (*ante*, p. 107).

The application of these cases in practice is as follows :—

In recent years it has been found that the form settled in the *London Assurance* case (p. 101) is open to improvement, and the following is generally used :—

Insurance
companies.

Application
of legal
decisions to
cases in
practice.

YEAR 1911-12.

YEAR 1908.

Marine Account Profits, <i>less</i> Expenses	...	...	...	£100,000
Fire " " "	...	...	...	50,000
Profits on Realisation of Securities (except on Life Account)	...	...	...	5,000
				<u>155,000</u>

Deduct Life Account Deficiency, viz. :—

Surplus at Quinquennial Valuation, 31st Dec. 1907	...	...	...	...	£310,000
<i>Less</i> Balance undivided at previous Quinquennium	...	...	...	...	10,000
					<u>300,000</u>

The Taxed Interest received on Life Account during the five years being	...	...	...	...	950,000
					<u>650,000</u>

<i>Deduct</i> one-fifth of Deficiency	<u>650,000</u>	
		<u>130,000</u>
		<u>25,000</u>

Untaxed Interest for the year (foreign interest), whether received in the United Kingdom or not (other than on Life Account) and not included in above profits ...								60,000	Insurance companies. Application of legal decisions to cases in practice.
Profit for 1908								85,000	
„ 1909 (arrived at as above)								5,000	
„ 1910 do.								60,000	
								3)150,000	
Average for 1911-12 ...								£50,000	

It will be noticed that in the first form one-fifth of the quinquennial surplus is taken, and taxed interest *for each of the three years* is deducted. The net result of this is, firstly, to include one year's taxed interest on an average of a certain five years, and then to deduct one year's taxed interest on an average of certain other three years. For this reason it is felt that the second form is the more appropriate, as it has the effect of simply eliminating the exact amount of taxed interest which has been originally included.

The authorities claim, under the *Scottish Mortgage* case, that they have a right to assess a company either under Case I. or Case IV., and they act, naturally, upon the principle of adopting the case most advantageous to themselves, and also of changing from year to year. Doubt has, however, been expressed in the *Norwich Union* case whether the case does really go so far as this. Of course, mutual societies or companies do not come under Case I., and it is very arguable that that is one of the reasons why Case IV. was inserted in the Act—viz., to provide the extent of the liability of a person receiving interest from abroad but not trading.

Case I. and
Case IV.

Insurance
companies.

Application
of legal
decisions to
cases in
practice.

Interest
taxable as
such.

"Receipt" in
United
Kingdom.

Where interest has been taxed at the source, or annual value has been paid upon, both are, of course, allowed as a deduction from the surplus before charging the profit for assessment to Schedule D.

It remains clearly laid down by the Court of Appeal that interest is taxable *as such*, and irrespective of whether there is any profit or not, and it must be paid upon, even though there either be a loss (subject to an exception, which we will deal with later), or if tax has already been paid by way of deduction on an amount in excess of the total net profit.

The construction of the *Gresham* case is likely to be the most troublesome thing which insurance companies will have to face in the future. We have seen that the Crown, firstly, require a return under Case I. They claim that this must include *all* foreign interest, *whether received in the United Kingdom or not*.

It would appear impossible to controvert this after the test applied by the House of Lords in the *San Paulo* case (p. 81), and see *Liverpool and London and Globe* case (p. 199).

Referring to the *pro formâ* account it will be noticed that *all* untaxed interest is included, whether received here or not, and we get an average of £50,000. Assume the same result year by year, and the whole of the £60,000 remains abroad.

Ten years later £600,000 comes home. The average under Case I. is still £50,000, so the Revenue turn round and charge under Case IV., but they are faced with the difficulty

that the foreign interest now received has already been taxed year by year as profit.

**"Receipt" in
United
Kingdom.**

Again, assume in the case before us that the whole untaxed interest in 1910 is £60,000, and that it is received here, though the average profit is £50,000. Then we are (as mentioned) called on to pay on £60,000. *For future averages* £10,000 of that interest (viz., the excess of interest over profit) is to be regarded (naturally) as *taxed*, and on the figures given the profit of the year would be £50,000, but this causes a departure from the usual practice of the authorities—viz., not to disturb past accounts.

Again, if in a given period a company receive £100,000 from abroad and remit £60,000 back, have they "received" £100,000 of interest (see the *Scottish Provident* case), or have they only received £40,000? The Lord Chancellor evidently realised the position to some extent when he spoke in the *Gresham* case of the *difficulty of identifying the actual sum*.

In *The Imperial Fire Insurance Co. v. Wilson* (Exchequer Division, 28th and 29th January 1876) the company sought deduction in respect of unearned premiums. They contended that, on an average, 33 per cent. of the year's premiums was in respect of risks which had not run off. It appeared that they were not in the habit of so treating the premiums in the books, and this was the first occasion on which they had endeavoured to do so for income tax purposes; and judgment was given for the Crown. The Court said that they gave

***Imperial Fire
Insurance Co.
v. Wilson.***

**Unearned
premiums
disallowed.**

Imperial Fire Insurance Co. v. Wilson.

Unearned premiums disallowed.

that decision with some reluctance, but there was not any power in the Act to make up the assessment in the manner desired ; and, taking one year with another, the only injustice that could be done would be in the first year. If ever the company discontinued business they would have a remedy in respect of the last year under sec. 134 of the Act of 1842.

It is submitted that the decision is unsound. The head-note speaks of a deduction from “ profits ” for unearned premiums. The deduction is from *receipts* before arriving at *profits*, and is no more from *profits* than a deduction of any ordinary liability from gross trading receipts is.

Car, &c., Insurance Corporation.

Unearned premiums allowed.

In connection with a claim by the Car and General Insurance Corporation, Lim., in 1905, for deduction for unearned premiums, the Surveyor (after considerable correspondence) allowed the same, *because it was provided for in the accounts of the company*, and, as the premium income was rapidly increasing, the receipts obviously referred to the succeeding year. The authorities, however, are rejecting (at least) all such claims where the amount is not provided for in the accounts.

General Accident Corporation v. McGowan.

Unearned premiums disallowed.

In *General Accident, Fire and Life Assurance Corporation, Lim. v. McGowan, Surveyor of Taxes* (House of Lords, 8th April 1908), a claim for unearned premiums was disallowed.

The case, however, seems to have been decided on particular facts. The Lord Chancellor pointed out that it was

not found, as a fact, that the proportion used ($33\frac{1}{3}$) was correct, and that the accounts, so adjusted, showed any more accurate result than was shown without such adjustment. He thought such adjustment should be granted in any case where it was shown that the real profits and gains would not be shown without it.

In *Clark v. Sun Insurance Office* the King's Bench Division held (on the finding of the Commissioners that 40 per cent. of the premiums was a reasonable amount to carry forward) that the case was distinguishable from the *General Assurance* case, and they therefore allowed the deduction—but this was overruled by the Court of Appeal (10th April 1911), who considered themselves bound by the *General Assurance* case.

*Clark v. Sun
Insurance
Office.*

Cozens-Hardy, M.R., said that, apart from authority, he would have agreed without hesitation that a properly ascertained percentage would have been a legitimate deduction, but, in his view, the House of Lords had decided *on the general principle* that it was not so; and he did not feel justified in distinguishing this case from the *General Accident* case, because the deduction had actually been made by the Sun Company and had not been made by the General Accident Company.

Fletcher Moulton, L.J., expressed the same view absolutely, saying it was "painful to give the stamp of judicial authority" to something which could not be supported by

**Clark v. Sun
Insurance
Office.**

the practice of the most intelligent and honourable members of the mercantile community. The decision of the Court must be in favour of a course of treatment for income tax purposes which, if acted upon financially, would probably be a gross fraud, and had, as a fact, been held at least to be a grave fault, and one which involved directors in damages. The history of the decisions on the point had been unfortunate, as in every case the companies had contended for an income tax treatment different from what they themselves adopted. He hoped that, if this case went to the House of Lords, they would feel themselves capable of putting the matter on a more satisfactory footing.

Buckley, L.J., was of the same view. He could give reasons for “distinguishing” this case from the *General Accident* case, but, as he did not agree with that decision, he was suspicious of himself. On the whole he thought it better for this case to go to the House of Lords, for them to say whether their decision was on the whole principle or whether the cases were distinguishable the one from the other.

**Insurance
companies.**

**Application
of legal
decisions to
cases in
practice.**

**Annuities
payable by
life office.**

A life office is bound (under the Act of 1888) to deduct tax from the annuities payable by them, and to account for the same to the Crown; they may, however, be considered to be payable *pro tanto* out of the taxed income of the Annuity Fund, and the amount of tax to be accounted for will be regulated accordingly.

In *Edinburgh Life Assurance Company v. Lord Advocate* (House of Lords, 9th, 20th and 21st July and 9th December 1909) the question arose as to whether or not the company were to account to the Crown for tax deducted from annuities. The receipts for the quinquennium to 31st December 1907 were :—

**Edinburgh
Life
Assurance
Co. v. Lord
Advocate.
Tax on
Annuities.**

Premiums	£1,529,502
Consideration for annuities ...	178,074
Transfer fees, &c.	684
Profits on investments	2,122
	£1,710,382
Interest, &c.	804,731
	<u>£2,515,113</u>

The total expenditure was £2,180,663 (£1,973,096 + increased liability £207,567), of which £168,204 was management and £218,463 payment of annuities. The surplus was therefore £334,450, after crediting the taxed interest of £804,731.

The decision of the First Division was that the annuities were to be treated as payable *pro rata* out of taxed income and out of other receipts, and that tax on the latter proportion must be accounted for.

The House of Lords reversed the decision and decided in favour of the company.

**Edinburgh
Life
Assurance
Co. v. Lord
Advocate.**

**Tax on
Annuities.**

Lord Atkinson said :—

“ In my opinion, where annuities such as these are charged upon a tax-bearing fund amply sufficient to pay them in full, though not set apart for that purpose, they cannot be held to be ‘ not payable ’ or ‘ not wholly payable ’ out of gains and profits brought into charge within the meaning of the 24th section (Act of 1888). For the purposes of that section I think that the interest on annuities charged upon the tax-bearing fund must under such circumstances be treated as payable out of that fund, so far as it will reach.”

Lord Gorell said that the question appeared to be whether the fact that the annuities were not payable *exclusively* out of profits charged prevented the company from having the right of deduction and retention. There did not seem to be any authority for the proposition of the learned Judges of the First Division that, because there were two funds, the liability must be apportioned rateably. They might pay out of whatever of the funds they pleased. The argument that it had not been shown that the annuities had been paid out of taxed income would, he said, seem to make the rights of the Crown depend upon the bookkeeping of the company ; but this could not be, “ nor do I think,” he said, “ the liabilities of the company can be made to depend upon their system of accounts.”

Arrangements have been made with some offices for annuities to be paid in full in certain cases where the annuitant is in receipt of not more than £160 per annum. In order to obtain the benefit of this concession, the following form has to be filled up annually by the annuitant and

an account of income later on, if called upon, and a list of all such annuities has to be forwarded by the company to the authorities together with the forms.

*Edinburgh
Life
Assurance
Co. v. Lord
Advocate.*

**Tax on
Annuities.**

D. ANNUITIES—INCOME TAX.

YEAR I—_____.

Name of Life Insurance Company_____

Address_____

I declare that the total amount of my Income from all sources does not exceed £160 per annum for the current year I_____, and I request that my Annuity of £_____ may be paid to me in full, without deduction of Income Tax, with the understanding that, when called upon to do so by the Surveyor of Taxes, I am prepared to furnish on the usual official form proof of my title to the exemption hereby claimed.

*This form is not applicable to annuities payable to married women who can only obtain exemption on Form No. 38 through the Surveyor of Taxes. Lady annuitants who sign this form must therefore state distinctly that they are either widows or spinsters.

Signature of Annuitant*_____

Address_____

Occupation_____

Date_____

For exemption and abatements generally, and the reason for the note as to married women, see Chapter VIII.

P

Copyrights,
&c.

The present practice as to copyrights is as follows :—

(1) Annual payments of fixed amount, or being a fixed share of profits, are assessed on the person making the payment in the same way as interest.

(2) An author, playwright, or artist selling copyrights, &c., to publishers is chargeable on the amount received less his expenses ; if sold on royalty, the whole amount of the royalty is chargeable.

(3) No charge is made upon a person who has an isolated transaction of such a nature ; it is looked upon as capital.

(See also Finance Act 1907 as to Royalties for use of Patents, p. 149.)

Mr. E. E. Nott Bower (Commissioner of Inland Revenue) stated before the Income Tax Committee which sat in 1904 that the aim was to tax the whole profit, and it was for vendor and purchaser to arrange together how it should fall upon each of them. They tax the whole of the copyright in the hands of the author, and that being the case, to avoid taxing it twice they allow the amount as a deduction *in some shape* from the publisher's profits.

Mr. Nott Bower's words may be of use to us on other matters :—" The District Commissioners are very unwilling, as Mr. Gayler has said, to tax the same profits twice, and so is the Board of Inland Revenue." Probably this

coincides with the experience of most of us, but the expression is worth emphasising. If we have grievances it is more in the nature of taxing *once* something which, we think, should not be taxed at all.

As an illustration take the case of *Strong v. Woodfield* (*post*).

With respect to diminished value by reason of wear and tear, in the case of *Caledonian Railway v. Banks* (*Surveyor of Taxes*) the Commissioners had refused to grant an allowance under the Act of 1878, on the ground that there was not any diminution of value within the meaning of the Act, the sums allowed in respect of repairs and renewals having been sufficient to meet the loss by wear and tear. They had also refused to grant any allowance under the Act for wear and tear of new plant which had not been in need of repair. It was stated that, during the first five years of the life of locomotives or carriages, they did not require any repairs. At the expiration of this time they were considered to be worth 75 per cent. of the original cost, and allowance was claimed in respect of this assumed depreciation of 25 per cent. The decision of the Commissioners was upheld by the Court of Session, Scotland (6th July and 4th and 18th November 1880). Lord Justice Clerk said :—

“ . . . The ground on which the Special Commissioners seem to have proceeded is the alleged and assumed fact that, during the first five years of the life of a railway locomotive or carriage, it requires no repairs, and is, therefore, of the same value—that is, capable of earning the same amount of income—as when it was new. That manifestly is a principle quite capable of being maintained, and, in my apprehension,

Wear and tear.

Caledonian Railway v. Banks.

Allowance to be wear and tear of the year on which profits ascertained.

Wear and tear.

Caledonian Railway v. Banks.

Allowance to be wear and tear of the year on which profits ascertained.

it is sound. The view seems to be this. The whole expenditure in repairs and renewals of old plant has been allowed for, and there is no diminution by wear and tear in the value of new additional plant for the first five years, in the sense of producing profit—that is to say, the plant requires no repairs to enable it to produce the same amount of profit that it did at first; then it is clear that from first to last the plant has been in the position that it was at starting, and is capable therefore, of producing the same amount of profit by the same outlay, and no more. If the Commissioners assumed that the expression ‘diminished value,’ in the 12th section of the Act of 1878, signifies value for the purpose for which it was intended in a going concern, I cannot say they were wrong in so holding. I do not think that the words had any reference to the value of the plant as merchantable or marketable articles, because its capacity to earn income constitutes its sole value to the railway company, and is the only quality contemplated under the statutes relating to the taxation of income.”

Lord Gifford said :—

“The company cannot get deduction for deterioration twice over, first by deducting the actual expense of repair and renewal, and then by deducting an additional estimate for the same thing. Nor will it do, as the railway company urge, to make a distinction between old and new plant, and to deal with the old plant in one way and with the new in another. I think the same principle must be applied to both. . . . It is the diminished value by reason of wear and tear *for the year* to which section 12 of the Customs and Inland Revenue Act 1878 relates.”

London County Council v. Edwards.

Tramway.

The case of *The London County Council v. Edwards* was heard in the King’s Bench Division on the 10th February 1909.

The London County Council bought certain tramways, and in 1902 they commenced reconstructing them. Electric trams were first running in May 1903, and by March 1904 38 miles of single track were in work.

Before acquisition it had been the custom to allow actual renewals in lieu of depreciation, and this method was continued by the London County Council up to and including the year 1903-4.

*London
County
Council v.
Edwards.
Tramway.*

On reconstruction heavier rails were laid. The London County Council did not ask for *all* cost of renewal, but only for so much as it would have cost to relay as before.

Of the 38 miles 5 were quite worn out ;

15 had an unexhausted life of 6 years ;

18 „ „ „ 11 „

(equal to eight years all round), giving 12 years exhausted on a computation of a 20-year life. It was proved that the cost of relaying as before would have been £3,725 per mile, and that the original cost had been more. They claimed 12-20ths of £3,725 per mile for 38 miles, or alternatively £3,725 for five miles (£18,625).

The Surveyor was prepared to allow £18,625, but no more.

Also 322 cars had been discarded. These had been bought in 1899 for £160 each. The present cost would have been £200 each. The electric cars cost £650 to £850 each.

The London County Council claimed so much of £650 or £850 as could be regarded as renewals on the basis of the cars not being quite worn out (say, £150 each).

**London
County
Council v.
Edwards.
Tramway.**

The Surveyor refused *any* allowance, on the ground that the cars were not thrown out on the ground of *wear and tear*, but of unsuitability.

The Commissioners gave judgment in favour of the views of the Surveyor.

Channell, J., gave judgment for the Crown. He said there was no question of law, but he did not wish to base his judgment on that. The difficulty arose from the change; had there been no change, "renewals" or "wear and tear" would have been about the same. The London County Council might have objected to the old method and asked for depreciation instead of renewals, but they had not done so. Clearly, there was no "wear and tear," and the London County Council, as a fact, had probably had more than they were strictly entitled to under the statute.

**Depreciation
of horses.**

In the case of (say) a carrying, or tramway, or omnibus company owning a great number of horses, of which a proper inventory is kept, it is suggested that the most convenient method is to write off the *dead horses* as such, and to depreciate the living ones, thus showing how much of the charge against profits is for actual loss and how much for depreciation, but no allowance will be made for horses *not renewed*.

**Depreciation
of ships.**

**Burnley S.S.
Co. v. Aikin.**

The first reported case on the question of depreciation of ships is that of *Burnley Steamship Company v. Aikin* (10th July 1894). The company are owners of the vessel

“ Burnley,” which is a steel ship ; they had been allowed a deduction for wear and tear of 5 per cent. on the diminished value. They appealed to the Commissioners, claiming a deduction of $7\frac{1}{2}$ per cent., and asking that in deciding upon their claim the Commissioners should consider :—

**Depreciation
of ships.**

***Burnley S.S.
Co. v. Aikin.***

- (1) That ships frequently become obsolete and of less earning power before they are physically worn out.
- (2) That their market or sale value might, and frequently did, fall below their value as fixed by the depreciation rate allowed in making the assessment, or even that proposed by themselves ($7\frac{1}{2}$ per cent.).

The Commissioners considered that the words of the Act of 1878 did not cover either of these cases, and they disallowed the claim of the company, and on appeal to the Court of Session the decision of the Commissioners was confirmed.

A similar question arose in *Leith, Hull, and Hamburg Steam Packet Company v. Bain* (Court of Session, Scotland, 1st, 2nd and 16th June 1897). The Commissioners had allowed depreciation at $5\frac{1}{2}$ per cent., being 5 per cent. on cargo steamers and 6 per cent. on passenger steamers (on diminished value), and the company appealed, claiming $7\frac{1}{2}$ per cent.—viz., 7 and 8 per cent. respectively. The Court dismissed the appeal, holding that no question of law had

***Leith, &c.,
Steam Packet
Co. v. Bain.***

*Leith, &c.,
Steam Packet
Co. v. Bain.*

been raised. The Lord President said :—

“I am far from saying that it is the duty of this Court to accept an estimate of diminished value through wear and tear which can be shown either to have been made without rhyme or reason, or to have proceeded upon some demonstrably erroneous method of estimation. But where, as here, there is a whole fleet of steamers; where, as here, both parties argued for an estimate of the depreciation of the whole fleet instead of an appraisal of the depreciation of individual steamers; and where, as here, the choice is between $5\frac{1}{2}$ per cent. and $7\frac{1}{2}$ per cent., it is necessary that the appellants should be able to put their finger on the difference which makes the one right and the other wrong.”

*Peninsular
and Oriental
S.S. Co.
v. Leslie.*

In the *Peninsular and Oriental S.S. Co. v. Leslie* the same question was again raised and a like decision was given (Queen's Bench Division, 1st February 1898, and Court of Appeal, 5th February 1900).

*Reviewing
decision of
Commissioners.*

In the Court of first instance Wright, J., said that the Court had nothing to do with whether or not the Commissioners had based their allowance on the supposition that the amount allowed should be considered as invested at interest and fixed it accordingly. This view differs from that expressed in the *Leith, &c.*, case (*post*).

*In conflict
with Leith,
&c., case.*

*British India,
&c., Co.
v. Leslie.*

This decision was followed in the case of *British India Steam Navigation Co., Lim. v. Leslie* (Queen's Bench Division, 29th and 30th November 1900).

*Leith, &c.
Steam Packet
Co. v.
Musgrave.*

This principle (of reviewing the allowance) was well demonstrated in *Leith, Hull, and Hamburg Steam Packet Co. v. Musgrave* (Court of Session, Scotland). The Commissioners had allowed $5\frac{1}{2}$ per cent. on the diminished value, and the company appealed. The case was argued before the

*Reviewing
decision of
Commissioners.*

Second Division of the Court on 20th December 1898, and on the 27th January 1899 was sent back for the Commissioners to amend it by stating—

*Leith, &c.,
Steam Packet
Co. v.
Musgrave.*

**Reviewing
decision of
Commissioners.**

- (1) What period of years they assumed as the average duration of the profit-producing life of the ships, having regard to their annual depreciation in value solely by wear and tear ;
- (2) Whether an allowance of $5\frac{1}{2}$ per cent. on the value of the steamer (year by year) would of itself be sufficient to produce a sum at the end of the steamer's average life equal to the steamer's cost ; and
- (3) Whether in fixing the sum allowed for depreciation they took into account the probable return obtainable by the due investment of the sum so allowed.

The reply of the Commissioners was :—

- (1) That they had assumed 22 years as the average ;
- (2) That $5\frac{1}{2}$ per cent. on the diminished value will itself amount, in 22 years, to £71 3s. 10d. per cent. ; and if the money so allowed were used in trade to produce 5 per cent., the amount would be increased to £138 2s. 8d., also, if invested in Consols, say at $2\frac{1}{2}$ per cent., it would amount to £98 11s. 2d. That this left out of view the breaking-up value of the ship ; and
- (3) That in fixing the deduction they had taken into account that the sum annually allowed might be

*Leith, &c.,
Steam Packet
Co. v.
Musgrave.*

Reviewing
decision of
Commissioners.

so invested as to produce a return of 3 per cent.
per annum. .

Judgment was delivered on the 16th June 1899. Lord Trayner said that it had been said the Commissioners were not bound to state the grounds on which they arrived at their determination, and perhaps they could not be compelled to do so. But he thought it only consistent with their public duty—a duty as much to the taxpayer as the Crown—that they should do so if asked. In this case they had done so, and the Court was in a position to judge whether that determination was within their statutory powers or not—in other words, whether it was a valid exercise of their statutory powers. He agreed with the Commissioners in thinking that the purpose of the Act of 1878 was

“to allow the taxpayer such a deduction from the amount of profits annually realised as will fairly and reasonably represent the diminished value by wear and tear, during the year, of the plant used to produce these profits, so that when the plant is worn out he may be in a position to replace it by new plant or machinery of a like description.”

But the Commissioners had not done this. The statute, he said, did not limit the deduction to such a sum as *if invested at 3 per cent.* would indemnify the person; it entitled him to the full amount of the depreciation, without condition as to how he disposed of it. The Commissioners were, therefore, wrong in taking the interest into account.

Judgment was given accordingly (see, however, *Peninsular and Oriental S.S.* case, p. 216).

In *John Hall, Junr. & Co. v. Rickman* (King's Bench Division, 8th December 1905) the questions were raised (1) whether depreciation could be claimed where an owner had already had the whole value of the ships allowed in past years; and (2) the same point with respect to a hulk, formerly a sailing ship, but which had been dismantled and was used as a floating warehouse. In the latter case it was contended that the hulk was not "plant."

Hall v. Rickman.

Depreciation allowed to full value.

Walton, J., said that the contention of the Crown was not unreasonable in itself, but he had only to decide on the effect of the Act of 1878. No *agreement* had been set up as between the owners and the Commissioners, and, that being the case, they must make a just and reasonable allowance for wear and tear. Nothing had been said by the Attorney-General on the second point, and he himself held that it was "plant" within the meaning of the Act.

Now, however, see sec. 26 (2) of the Finance Act 1907, *ante* p. 177.

At the meeting of the Peninsular and Oriental Steamship Company in December 1896, Sir Thomas Sutherland, speaking on the question of wear and tear, stated that between 1870 and 1894—a period of 25 years—the company had sold for £516,601 steamers of which the original cost was £4,336,362, and, further, that during the time in which these steamers had been in the company's service the amount of depreciation written off at 5 per cent. on the original cost, added to the amount realised by the sales, aggregated only £4,267,621, as compared with the original cost as above.

Experience of P. & O. S.S. Co.

Circular by
Board of
Inland
Revenue.

After the decision in the case of the *Peninsular and Oriental S.S. Co.* the Board issued another circular in lieu of that of September 1895 (as per our Second Edition). The terms they are prepared to agree to are as follows, and have been, at least for the present, accepted by many shipowners :—

That for the year 1901-2, and in future, allowances for wear and tear be made on the basis of prime cost (in substitution for written-down value), without regard to the price paid on a change of owner.

That the revised rates of allowances on such prime cost be 4 per cent. in the case of passenger and ordinary cargo steamers, 3 per cent. in the case of sailing ships; the net expenditure, if any, incurred in the renewal of engines or boilers, as well as the cost of any structural improvements, to be added to the prime cost of steamers; the cost of ordinary repairs to be also allowed as a deduction.

Allowances at the revised rates to be made year by year until the cost of the vessel, less, of course, the breaking-up value—which for facility of computation may be taken at the rate of 4 per cent. in the case of steamers and 3 per cent. in the case of sailing vessels—has been recouped; and if in any year there be no profit, or not sufficient to exhaust the depreciation, the allowance will be correspondingly continued beyond the 24 or 33 years.

Should the total allowance be exhausted before the termination of the ship's life, and the ship subsequently change

hands, the question of any future allowance which may be claimed for wear and tear should be specially dealt with by the Commissioners, as also should any case in which, from exceptional circumstances, the revised normal rates may be insufficient to meet the requirements.

**Circular by
Board of
Inland
Revenue.**

The allowance for refrigerators or refrigerating machinery is $6\frac{1}{2}$ per cent. on the prime cost ; for oil tank steamers 5 per cent. on prime cost.

The Board consider that these rates leave an ample margin to provide for any deficiency which may occur in any particular year, or years, by reason of the absence or insufficiency of profits to cover the depreciation allowance.

The following is a summary of the Board's circular as to the arrangement they are prepared to enter into with gas concerns :—

**Arrangement
with Board.**

1. No depreciation.
2. All renewals allowed, but not extensions.
3. Exceptional expenditure may go forward like unexhausted depreciation.
4. This to apply for 1908-9 and old years which are *awaiting settlement*.
5. Computations to be recorded, whether any profit or not.
6. Depreciation which has been allowed and unexhausted (*i.e.*, standing to credit) to be taken into account.
7. Disputes to go to the Board.

Arrangement
with Board.

As to electric undertakings they are prepared to agree as follows :—

Trams—

1. *Life of permanent way.*

If 50,000 car miles p.a. to be considered 16 years.

75,000	„	„	„	„	14	„
--------	---	---	---	---	----	---

125,000	„	„	„	„	12	„
---------	---	---	---	---	----	---

over 125,000. Special consideration.

2. Special circumstances (gradients, &c.). Special consideration.

3. *Renewals—*

£4,400 per mile of single track until general renewal of track takes place.

4. No allowance for repairs or maintenance of permanent way, but an amount to be allowed, based as follows :—

Renewal	...	...	...	...	...	£4,400
---------	-----	-----	-----	-----	-----	--------

Estimated cost of repairs (£100 per annum)	...	1,600
--	-----	-------

1-16th	<u>£6,000 = £375</u>
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5. Repairs to be arrived at on average of the last three years (or less if trams not running three years).

6. Repairs include renewals at junctions, &c., which occur at frequent intervals.

7. Repairs allowance to be reviewed every five years.

8. An account to be kept, and in 10 or 15 years, or on general renewal, to be reconsidered, but no re-opening of past allowances.

9. No extensions and improvements allowed.

10. These regulations apply to overhead trolley systems. Other systems to be specially considered.

Cables—

11. Repairs and 3 per cent. (diminished value) depreciation.

Overhead Equipment—

12. No depreciation. All expenditure on maintenance and renewals allowed.

Cars—

13. Usually all expenditure on maintenance and renewals allowed.
14. But depreciation in lieu if circumstances justify it.
15. If so, 7 per cent. (diminished value).
16. *Repairs* allowed anyway.

**Arrangement
with Board.***General Plant—*

17. Repairs and 5 per cent. depreciation (diminished value).

Gas and Water—

- 18, 19, and 20 as 1, 2, and 3 in case of gas concerns.

*Electric Light.**Cables—*

21. As 11 above.

Plant—

22. As 17 above.

Conduits

23. No depreciation, but all renewals.

Meters, Loose Tools, and Office Furniture—

24. No depreciation, but all renewals.

General—

25. As 6 in case of gas concerns.
26. An account to be kept for special depreciation allowed.
Renewals to be written back.
27. Defines "written downward" value.
28. As 4 in case of gas concerns.
29. As 5 " "
30. As 6 " "
31. As 7 " "

In agreeing to such arrangements it is obvious that concerns should take steps to guard themselves against *changes*, and to obviate the disadvantage at which the London County Council were placed with respect to their tramways (p. 212).

Coming now to consider in some detail other claims for **Deductions.** deduction which have been the subject of decisions in the Courts :—

Deductions.**King's Lynn Harbour Commissioners.****Repayment of money raised to renew mooring chains allowed.**

In *King's Lynn Harbour Mooring Commissioners* (in the Exchequer Division, 9th June 1875) the facts were as follows:—The Commissioners had some years previous to 1875 renewed 16 or 17 mooring chains at a cost of £1,000 or £1,500. Money had been raised by bonds under their Act of Parliament to pay the cost, and the bonds were repayable, say, at £400 per annum. The question arose on the assessment for 1874-75 whether £400 paid in discharge of bonds in that year could be deducted. The Commissioners regarded the £400, although not strictly belonging to the annual Revenue Account, as a proper deduction, inasmuch as it had been applied in the repayment of money expended in the *renewal* of works necessary for raising the income of the Commissioners, and this opinion was upheld by the Court.

It is clear that the £1,000 or £1,500 (being paid for renewals) would have been a proper deduction from profits in the year in which it was expended, and the allowance of the £400 annually simply spread the amount over three or four years.

Watney v. Musgrave.**Premiums paid for leases disallowed.**

In *Watney v. Musgrave* (Exchequer Division, 11th March 1880) a claim for deduction in respect of premiums paid for leases of public-houses was disallowed. The contention was that the profits were increased by reason of the sale of liquor at the houses leased. The expenditure was, however, held to be an expense unconnected with the production of the article.

In the course of his judgment, Kelly, C.B., said that no doubt *advertising* increased the profits of a business, but he

was not aware that any attempt had ever been made to deduct the cost of advertisements.

Deductions.

In practice, ordinary trade advertisements are allowed as a deduction, but where large sums are expended to push a particular thing the whole cost would not be allowed. It would be a matter of arrangement with the Surveyor or Commissioners, and we believe a liberal view is taken in such cases.

Advertisements.

In *Blake v. Imperial Brazilian Railway* (Court of Appeal, 15th and 17th November 1884) the company had issued 5½ per cent. debentures, the interest thereon, and redemption, being secured by the Brazilian Government guarantee of 7 per cent. per annum for 30 years on the preference shares and debentures, the difference between the interest payable by the company and that receivable from the Government being applied as a sinking fund for the purpose of redemption of the debentures.

Blake v. Imperial Brazilian Railway.

Interest appropriated to sinking fund disallowed.

It was sought to establish that this difference was not a profit or gain, but was a contribution towards the making of the line, but the Court held (affirming the decision of the Queen's Bench Division) that the amount was clearly interest, and was assessable.

In *Forder v. Handyside* (in the Exchequer Division, 29th January 1876, i.e., previous to the Act of 1878) a claim for allowance in respect of wear and tear of fixed plant and machinery was disallowed.

Deductions.*Gilliat & Watts v. Colquhoun.*

Depreciation of lease disallowed.

In *Gilliat & Watts v. Colquhoun* (Queen's Bench Division, 17th and 18th December 1884) a claim for depreciation in value of a lease of premises year by year was disallowed.

City of London Contract Corporation v. Styles.

Portion of purchase money and interest paid disallowed.

An interesting question was decided by the Court of Appeal, 10th November 1887, in *The City of London Contract Corporation, Lim. v. Styles*. The company had, on the 5th June 1882, purchased a business consisting of partly executed and wholly unexecuted contracts. They claimed to be assessed on £41,894, being twelve months' proportion of £45,386, the profit for thirteen months from 5th June 1882 to 30th June 1883.

They submitted the following Revenue Account for the period :—

Dr. REVENUE ACCOUNT from 5th June 1882 to 30th June 1883. Cr.

	£	s	d		£	s	d
To Sundry Expenses, Advertising, Stamps and Covers, Stationery, Printing, Law Charges, Brokerage, Commission, Discount, Interest, Office Rent, Salaries, Directors' Fees, and General Charges	39,135	8	3	By Profit on Sundry Contracts	128,747	9	7
" Balance of this Account, Profit	45,386	5	0	" Profit on Sundry Investments	35,774	3	8
					164,521	13	3
				Less Amount deducted from Purchase Account for surplus assets realised and amount written off Goodwill	80,000	0	0
					£84,521	13	3
	£84,521	13	3				

The Commissioners assessed them on £134,202, being twelve months' proportion of £145,386—viz., the profit before deduction of two sums of £20,000 and £80,000. It was admitted that the item of £128,747 9s. 7d. was a net

sum after deducting £20,000 paid away in respect of interest guaranteed by the company during the construction of works undertaken by them, and that the company had not deducted income tax on payment of the interest. The sum of £80,000 substantially represented a portion of the money paid for the purchase of partially executed or wholly unexecuted contracts. The company contended that the £20,000 was not chargeable with income tax in their hands, inasmuch as it was not money paid to the shareholders of the company; also, that the £80,000, being expended in the purchase of the rights and title to, and the benefit of, the identical contracts from the execution of which the net profits of the company arose, such profits could only be fairly estimated after deducting that expenditure.

Deductions.

*City of
London
Contract
Corporation
v. Styles.*

**Portion of
purchase
money and
interest paid
disallowed.**

The Court gave judgment for the Crown. They considered it perfectly plain that the £80,000 was part of the capital employed for the purchase of the business, and no part of it could be deducted. As to the £20,000, the company ought to have deducted tax on payment of it, and they must pay the tax to the Commissioners.

A somewhat analogous case came under our notice, where the A. company, which had been trading at a loss, was paid a lump sum (spread over several years) by B., in consideration of its discontinuing business during those years. These payments were duly made, but before the expiration of the period the entire assets of the A. company were bought by B. for a further sum. The Surveyor assessed the company, year by

**Profits for dis-
continuance
of trade.**

**Deductions.
Profits for dis-
continuance
of trade.**

year, on the instalments under the first-named agreement, and the company appealed to the Special Commissioners, claiming :—

- (1) That the sum was in effect a purchase of the goodwill, and was a capital item, and not assessable at all ; or
- (2) Alternatively, that it was in lieu of any profits which they might have made, and should be averaged with past results.

The Surveyor contended that the sums received were profits “ for discontinuance of trade,” and fell to be assessed under the sixth case. That the assessment of the company as a going concern was under the first case, and profits assessable under one case could not be averaged with those assessable under another.

The Commissioners accepted the Surveyor’s view and decided accordingly.

**Cook v.
Knott.**

**Travelling to
residence
disallowed.**

In *Cook (Surveyor of Taxes) v. Knott* the Queen’s Bench Division held (13th December 1887) that there could not be any deduction allowed a solicitor for expenses of travelling from Bromyard, where he held a public appointment, to Worcester, where he resided and carried on business. This case arose in connection with a claim under Schedule E, but there seems no reason why it should not be equally applicable to Schedule D.

This case was followed in *Revell v. Directors of Ellworthy Bros. & Co., Lim.* (Queen's Bench Division, 16th December 1890), where the directors sought to deduct their travelling expenses from their places of residence to the office of the company.

Deductions.
Revell v. Ellworthy.
Travelling to residence disallowed.

In *Smith (Surveyor of Taxes) v. Westinghouse Brake Co.* an English company had opened a manufactory at Paris, and fitted machinery there. They subsequently closed it, removed a portion of the machinery, and re-opened the manufactory on a smaller scale, thereby losing a portion of the original expenditure. The Queen's Bench Division held (29th June 1888) that this was a loss of capital, and that there could not be any deduction allowed.

Smith v. Westinghouse Brake Co.
Loss on removal of machinery disallowed.

In *Clayton v. Newcastle-under-Lyme Corporation* (Queen's Bench Division, 29th June 1888) the corporation sought to deduct a sum of £500, an annual instalment set aside towards providing a fund for necessary expenditure on plant and apparatus in consequence of their having purchased the gas undertaking when the structural condition of the works was imperfect and defective. In making the assessment, deduction had been allowed in respect of the actual cost of all ordinary renewals, repairs, and maintenance of works, such as new retorts, annual repairs to the plant and apparatus, &c. The Court gave judgment for the Crown. The case is not reported, but the reason of the decision was doubtless that the expenditure of the accumulated sums of £500 would be an outlay of capital, as it might fairly be considered for an ordinary Profit and Loss Account.

Clayton v. Newcastle-under-Lyme Corporation.
Cost of structural alterations disallowed.

Deductions.

**Highland
Railway Co.
v. Special
Commissioners.**

In *Highland Railway Company v. Balderston* it was held (Court of Session, Scotland, 10th July 1889) that there could not be any deduction allowed for—

**Cost of
improvements
disallowed.**

- (1) A sum expended on the permanent way of a line acquired by a company, to bring it up to the standard of their main line.
- (2) A sum representing cost of extra weight in relaying part of their main line with steel rails in place of iron, and with heavier chairs.

As a matter of fact, the payments had been taken as capital outlay for the purpose of the annual accounts. The company contended that this had been done for convenience only, and that as they did not derive any additional revenue in respect of the outlay it was a proper deduction from the revenue of the year. The Court, however, did not think this view could be upheld.

**Nizam's
Railway Co.
v. Wyatt.**

**Income
appropriated
to sinking
fund
disallowed.**

In *Nizam's State Railway Company v. Wyatt* (*Surveyor of Taxes*) the Government of the Nizam had agreed to pay the company for twenty years an annuity, equal to 5 per cent. per annum, on the share capital and debentures of the company; the same to be applied in payment of 5 per cent. upon the share capital, and 4 per cent. upon the debentures. The difference of 1 per cent. upon the debentures was to be set aside as a sinking fund for the redemption of the debentures. The net earnings of the company had not, in any year, amounted to the sum paid by the Nizam; and, under the

agreement, such net earnings were payable to him in part satisfaction of the sums paid by him under the guarantee. An assessment was made upon the company for £110.448, the amount received from the Nizam. The company appealed against this, contending that the assessment should be reduced by £2,416, being 1 per cent. on £241,600, the amount of debentures issued.

Deductions.

*Nizam's
Railway Co.
v. Wyatt.*

**Income
appropriated
to sinking
fund
disallowed.**

They contended that since they were compelled to apply it to the sinking fund they became mere trustees for the purpose of applying it to such fund; and that it was not "gain, income, or profit," within the meaning of the Income Tax Acts.

The Queen's Bench Division held (20th and 21st January 1890) that the ultimate appropriation of the sum did not affect its liability to tax. It was, in fact, income, and the company were not entitled to the deduction.

The company gave notice of appeal, and obtained a postponement of the case in order to obtain instructions from India. On the 5th June the company applied for a further postponement, but, though there was not any objection offered by the Crown, the Court considered that ample time had already been allowed, and declined to allow further delay.

The case of *Magistrates of Portobello v. Sulley* (Court of Session, Scotland, 10th July 1890) raised a question as to the assessment of the profits of a cemetery owned by a town council. By their Act, the town council were to levy a

*Magistrates
of Portobello
v. Sulley.*

**Interest on
borrowed
money
disallowed.**

Deductions.***Magistrates
of Portobello
v. Sulley.*****Interest on
borrowed
money
disallowed.**

cemetery rate, in case where the burial fees, &c., received were insufficient to provide for the expenses, interest on borrowed money, and sinking fund. The council appealed against an assessment on them of £185, being the difference between burial fees, &c., received, and wages and taxes paid.

They endeavoured to distinguish their case from the *Paddington* case, p. 67), on the ground that there the money was borrowed from the Public Works Loan Commissioners, and there was not any income tax imposed until after the loan had been repaid, and further it was held by the Court that the cemetery was carried on for the benefit of the ratepayers. In this case, there was still a necessity to tax the ratepayers, as the receipts were not sufficient to cover expenses, interest, and sinking fund. They also contended that the *Edinburgh* case (*post*) did not apply, as in that case they were a commercial trading company.

The Surveyor contended that they had made a profit of £185, and that the assessment was rightly made, in addition to the assessment separately made upon the interest paid out of the rate. He referred to *Mersey Docks and Harbour Board v. Lucas* (p 66) as showing that surplus income was assessable as profit, without reference to the manner in which it was applied. Further, there was not any real difference between the present case and the *Paddington* case.

The Court considered that the Council had made a "profit" of £185; that interest on borrowed money could not be deducted, as that would be allowing them to deduct tax

from the creditor, and not to account for it to the Crown. That was a thing which nobody was entitled to do; and, therefore, apart from the express words of the statute, the interest could not possibly be a proper deduction. Taking the cases cited, they found it impossible to escape from the conclusion that the whole of the profit was assessable. See also *Gresham* case (*post*).

Deductions.

In *Dillon (Surveyor of Taxes) v. The Corporation of Haverfordwest*, the Corporation, who, by a private Act of Parliament, were empowered to sell gas, provided they first lighted the public streets, claimed to deduct the cost of such lighting from their profits. But the Queen's Bench Division held (5th February 1891) that there could not be any such deduction made. The public lighting was not an expense necessarily incurred in carrying on their trade, but was only an expense necessary to enable them to enter on that trade.

Dillon v. Corporation of Haverfordwest.

Cost of lighting public streets disallowed.

In *Arizona Copper Company v. Smiles* the Court of Session, Scotland, held (20th November 1891) that the company were not entitled to deduct the amount of a bonus which they had undertaken to pay along with the repayment of capital sums borrowed. The company had contended that the sums were not paid "out of profits," but were an expense of carrying on the business, without which there could not be any profit earned. The Surveyor had contended that it was either a capital payment, or, more likely, additional interest on borrowed capital. Further, he said such a deduction was contrary to the prohibitions in Schedule D and sec. 159 of the Act of 1842.

Arizona Copper Co. v. Smiles.

Bonus on repayment of loans disallowed.

**Deductions.
Case in
practice.**

In a somewhat similar case, which arose in practice—viz., where a company issued debentures secured by a trust company, and paid the trust company 1 per cent. per annum for such insurance—the payment was allowed as a deduction by the General Commissioners, but the Board of Inland Revenue gave notice of appeal, and the company did not press the point.

**Texas Land,
&c., Co. v.
Holtham.****Commission
for placing
shares
disallowed.**

A somewhat analogous case is that of *The Texas Land and Mortgage Company, Lim. v. Holtham (Surveyor of Taxes)*, heard in the Queen's Bench Division 2nd March 1894, where the company sought to deduct a sum of £5,000, commission paid to brokers for placing an issue of debentures. Judgment was given for the Surveyor, the Court laying down that the cost of raising capital ought not to be deducted in ascertaining profits.

**Expenses of
issuing
debentures.****Memorial to
Chancellor of
Exchequer.**

In this connection in 1896 a memorial was presented to the Chancellor of the Exchequer to the effect that—

“A large part of the business of the (trust) companies is to receive money from the public on deposit or debenture, for the purpose of investment in the manner above indicated (*i.e.*, of investing in stocks, shares, or other securities in the British Colonies, the United States, and elsewhere abroad, or for the purpose of lending money on mortgage over lands in those countries); and the business is analogous to that of a banker, the funds being, in large part, kept in a floating condition, both by the continual repayment to old depositors and receipt of money from new depositors, and by the continuous realisation and re-investment of the moneys invested. In most cases the companies have, many years ago, reached the limit of their borrowing powers, and any moneys which they re-borrow are for the purpose of repaying to depositors desiring to withdraw. The money received on deposit is, in almost all cases,

received from persons residing in the United Kingdom. . . **Deductions.**

"The money which is received from depositors is not the capital of the company. It is simply the material by the manipulation of which the profits are earned, and in the great majority of cases the charges incurred are not so much for the purpose of adding to the existing deposits, as of maintaining the gross amount on deposit at the full amount required for the successful prosecution of the company's business."

The reply from the Treasury intimated that—

"No arrangement which the Chancellor of the Exchequer might make can in any way affect the discretion of the District Commissioners, who are by law constituted the sole judges in each particular case, and have full authority to determine what are, as a matter of fact, the proper deductions to be made in arriving at the balance of the profits on which income tax is, in any instance, chargeable. Subject to this consideration, it has been arranged that, in the case of renewal of existing debentures, as distinguished from their original creation, the Surveyors will not object, on behalf of the Revenue authorities, to the deduction of reasonable expenses."

Reply of Treasury to memorial as to expenses of issuing debentures.

An interesting question arose in *Aikin (Surveyor of Taxes) v. The Trustees of the late C. M. Macdonald* (Court of Session Scotland, 27th November 1894). The trustees are part owners of certain tea estates in India, the average profits therefrom received in this country being £1,684. In making their return to income tax they sought to deduct £200 as the average annual expense incurred *in this country* in connection with the management of the trust. It was agreed that the assessment fell to be made under the fifth case. The Court disallowed the deduction. They said that duty was to be charged on the full amount received in this country, on an average of the three preceding years, without any deduction other than those expressly allowed, and the trustees had

Aikin v. Macdonald.

Foreign estate. Expenses here disallowed.

Deductions.

failed to show any section of the Act under which power was given to make such a deduction as this.

***Watson v.
Royal
Insurance Co.***

**Amount
paid for
commutation
of salary
disallowed.**

The case of *Watson v. Royal Insurance Company* was heard in the House of Lords 12th November 1896. The company claimed deduction from the assessment upon them in respect of a sum of £55,846 under the following circumstances:—They had acquired the business of the Queen Insurance Company in 1891, and by the agreement they were to retain the services of the manager of the Queen Company at £4,000 per annum, with liberty to commute the salary for a gross sum. This sum was the amount for which they had commuted the salary. The Commissioners had allowed the deduction, and the Crown appealed.

The Surveyor contended that the sum was really part of the consideration paid for the purchase of the business, and was, therefore, a capital expense. It was admitted that, if the company had continued to pay the £4,000 per annum, that would have been a proper charge against the profits for income tax purposes.

The company contended that the sum was a proper deduction from the profits of the year, in the same manner as the £4,000 per annum would have been.

In the Queen's Bench Division (23rd May 1895), the Court differing in opinion, Wright, J., withdrew his judgment, and judgment was given against the Crown. This decision was

reversed in the Court of Appeal (19th November 1895), whose judgment was affirmed by the House of Lords, the Court being unanimously of opinion that the payment was an expenditure of capital. Lord Herschell said the case was not the same as if it were a payment made to a person employed by the company to determine his service—a mere part of an arrangement between the company and one of their employees. He desired to say nothing to prejudice the decision if such a case arose. Lord Shand made a similar statement. He said :

“ If this had been a case of a voluntary agreement between the manager of an insurance company and the company, for the payment to him of a salary for so many years, to last for a definite time, but with power to the company at any time they might think fit to terminate the service by making the payment at once of a capital sum, I think there would have been much force in the argument that such a payment might properly form a deduction from gross profits in striking the balance liable to income tax; and I should make the same observation as to a case in which there has been wrongful dismissal of a person having an engagement for a term of years, and who succeeds in obtaining damages on that account. But this case seems to me to be entirely different.”

In *Rhymney Iron Company, Lim. v. Fowler* (Queen’s Bench Division, 13th May 1896) a subscription had been paid to a Coal Owners’ Association, the object of which was to pay its members an indemnity in the event of a deficiency or stoppage of output being caused by strikes, &c. It was held that this was not money laid out for the purposes of the trade, and was, therefore, not admissible as a deduction. (See, however, *post*, p. 243.)

Deductions.

Watson v. Royal Insurance Co.

Amount paid for commutation of salary disallowed.

Rhymney Iron Co. v. Fowler.

Subscription to Coal Owners’ Association disallowed.

Deductions.***Southwell v.
Savill Bros.,
Lim.*****Call of licences
not allowed.**

In *Southwell v. Savill Bros., Lim.* (King's Bench Division, 15th May 1901), the Surveyor appealed against a decision of the Commissioners allowing deduction of sums expended by Messrs. Savill Bros., Lim., in applications made by the company to the licensing justices for the grant of new and additional licences to houses owned and leased by them, and for which the company conduct the applications for the purpose of maintaining and, if possible, increasing their trade. They were made up of law costs, printing, advertising, preparing petitions, serving notices, Court fees, surveyors' fees, and payments for "call of licences." The last-named payments were made to owners of licences for the right to call for a surrender of the licences attached to such houses in the event of the justices requiring them to be surrendered before grant of a new licence for a new house. As the licensing justices (in the Beacontree division of Essex) require an applicant for a new licence to offer surrender of existing licences as a preliminary to granting a new one, it was contended that this was a *necessary expense*. When such applications were *unsuccessful*, the expenses were charged against revenue; when *successful*, they were added to the cost of the houses.

The Surveyor contended that it was an outlay of capital for extension, and the Court upheld this view. It was admitted that if the applications were successful the expense could not be deducted; the Court thought it was difficult to see how it could be otherwise when unsuccessful.

In the *Granite Supply Association, Lim. v. Kitton* (Court of Session, Scotland, 7th November 1905) expenses of removing to a new works were disallowed.

Deductions.
Granite Supply Association, Lim.
Cost of removing disallowed.

In *Moore v. Stewarts & Lloyds, Lim.* (Court of Session, Scotland, 12th June 1906):—

Moore v. Stewarts & Lloyds, Lim.

By an agreement of 1903 the Wilson's Tube Company agreed with Messrs. Stewarts & Lloyds, Lim., that the latter might nominate directors to their board. In consideration of this Stewarts & Lloyds, Lim., agreed (substantially) to guarantee the preference dividend of the Wilson's Company.

Guaranty of dividend.

In 1904 £841 was paid under this guaranty. The results of the Wilson's Company for assessment came out at an average loss, and consequently there was not any tax payable by them.

The Surveyor resisted the deduction of the £841 from the accounts of Messrs. Stewarts & Lloyds, on the ground that—

- (1) It was not an expense of *earning* the profits, but was in consideration of nomination.
- (2) It was not “wholly laid out,” &c. (*Rhymney* case.)
- (3) It was an application of profit. (*Mersey Dock* case.)

The Commissioners decided in favour of the company, and the Court of Session upheld this, holding that, apart from whether the transaction resulted favourably or otherwise, the money was clearly laid out wholly and exclusively for the purpose of the trade.

Deductions.
Strong v.
Woodfield.
Damages
disallowed.

In *Strong & Co., Lim. v. Woodfield* the facts were that a guest in one of the licensed houses of Strong & Co., Lim., was injured by the falling upon him of a chimney, during a gale, whilst in bed in the hotel. The damages and costs in an action brought by him against the company amounted to £1,490. This sum the company sought to deduct from their profits for income tax purposes, and the Crown resisted the claim. The point was whether this amount fell to be excluded under Rule I. of Cases I. and II., that “no sum shall be set “against or deducted from . . . such profits or gains for “any disbursements or expenses whatever, not being money “wholly and exclusively laid out or expended for the purposes “of such trade, manufacture, adventure, or concern.” The Commissioners were in favour of the Crown, and the company appealed. On behalf of the company it was argued that this was the same as damages paid by a railway company for personal injury, or to a passenger whose luggage, by the carelessness of a porter, had been left behind, or the case of a bank paying the damage caused by the payment of a forged cheque, or damages paid to an employee for wrongful dismissal, or (as suggested by Phillimore, J.), where a grocer had to pay a fine in consequence of his scales being incorrect. The Crown argued that the whole question was whether damages recovered from a taxpayer for personal negligence (a tort) could be deducted and that this deduction was prohibited by Section 159, and that Lord Shand’s words in the *Royal Insurance* case were merely *obiter dicta*. Phillimore, J., considered the company was clearly entitled to the deduction, and that Lord Shand’s expression was almost prophetic of this case.

The Crown appealed. They further contended that damages payable to a person who had been negligently run over by a brewer's dray would not be deductible; that Lord Shand's dictum was wrong; that damages payable by a newspaper for libel would not be deductible; nor damages payable by a professional man whose coachman had negligently run over someone.

Deductions.
Strong v.
Woodfield.
Damages
disallowed.

The company replied that this sum must first be deducted to arrive at the "profits"; that damages payable by a surgeon who had been negligent in performing an operation would be deductible.

The Court of Appeal reversed the decision of Phillimore, J. The Master of the Rolls said that a sum must be shown to be an expense incident to the earning of the profits to enable it to be deducted. The line was a fine one, and some cases were on one side and some on the other. He considered this to be a sum paid *out of profits after they had been earned*, though it was granted the company would not have had to pay it unless they had kept the inn and received guests; and Cozens-Hardy and Mathew, L.JJ., agreed, and the former likened the case (erroneously in our view) to that of a claim made by a *passer-by* who was injured by a chimney falling on him in the street.

The company appealed to the House of Lords, where the decision of the Court of Appeal was unanimously upheld (14th June and 30th July 1906).

R

Deductions.

The Lord Chancellor said it did not follow that if a loss was *connected* with a trade it must always be allowed as a deduction; losses by a railway company in compensating passengers for accidents in travelling might be deducted, but a tradesman could not deduct an amount paid to a foot passenger who was injured by (say) one of the shutters falling upon him. Lord James of Hereford entertained some doubt about the decision. He thought there might be a distinction where the person would not have been injured if the company had not been carrying on the business of innkeepers, but his doubt was not sufficient to cause him to differ from their Lordships.

***Stevens v.
Durban-
Roodepoort
Gold Mining
Co., Lim.***

"Profits Tax."

In *Stevens v. Durban-Roodepoort Gold Mining Co., Lim.* (King's Bench Division, 11th February 1909), it was held that the "Profits Tax" (imposed in the Transvaal in 1902) was to be allowed as an ordinary outgoing in 1902, and that the assessment was to be based on the average profits of 1900, 1901, and 1902. The company had contended (1) that having paid the "Profits Tax" they were not to be chargeable with income tax a second time, or (2) for an allowance of the whole tax off the average gross profits.

***Guest, Keen &
Co., Lim. v.
Fowler.***

**Subscription
to association.**

In *Guest, Keen & Nettlefolds, Lim. v. Fowler* (King's Bench Division, 3rd March 1910) the question arose as to certain payments to the Steel Hoop Manufacturers' Association, which is an association for the purpose of keeping up prices. The members of the association (three) agree to adhere to fixed prices, and are entitled to shares of the total.

orders received by the whole of the members in certain agreed proportions. Any member who has invoiced more than the proper percentage pays a fixed amount of 10s. per ton on the excess—such payments being distributed in due proportion amongst those who have invoiced less. There were two items in dispute, one being payments (in excess of receipts) to the pool; and the other being payments towards the administration expenses of the association.

Deductions.

Quest. Keen & Co., Ltd. v. Fowler.

Subscription to association

Judgment was given for the company. Bray, J., said that the payment in *Rhymney v. Fowler* (p. 237) was in the nature of a premium for an indemnity in case of a strike. In that case Baron Pollock and Bruce, J., had both pointed out that the money was not laid out “for the purposes of the trade”; it was laid out whilst the trade could not be worked. That clearly distinguished it from the present case.

Many associations have now agreed with the authorities in the terms of the following memorandum:—

Arrangements under which Subscriptions and Levies paid by Members of Associations may be allowed as a Trade Expense in computing their Income Tax Liability.

1. That all subscriptions, entrance fees, and levies paid by members of the Association be allowed as a trade expense in the individual accounts of such members on the following conditions:—
2. That the Association renders copies of its rules and regulations to the Board of Inland Revenue.
3. That the Association renders accounts of its income and expenditure, and pays tax on the balance of income over expenditure, on the basis of three years' average, and that all administrative expenses, all payments to the Association, all payments to members by way of compensation for strikes, and grants or payments of any

**Deductions.
Subscription
to association.**

other kind (other than loans), and payments for legal charges in defending test cases on behalf of the members (including any contributions or subscriptions which may be made to any other organisation, subject to the conditions in paragraph 7), be treated as ordinary expenditure.

4. That the recipients of compensation in labour disputes and grants or payments of any other kind (other than loans) bring the amounts received to the credit of their individual trading accounts, and that the Association furnishes particulars yearly to 31st December, of the amounts paid in that way and to whom paid. In the event of any member or other person refusing to account for the tax on any such receipts in the ordinary course, the amount is to be included in the assessment upon the Association, *i.e.*, by disallowing the items from the expenditure in computing the liability of the Association.

5. That the Association renders accounts for the last completed year, and is assessed on such accounts for the year ending 5th April 1912; that for the following year it is assessed on the basis of the accounts for the two years preceding the year of assessment; for the third year and subsequent years on the average of the three preceding years.

6. That the payment of subscriptions, entrance fees, and levies be allowed, and receipts by members from the Association be credited in the accounts of the individual members for the three or five preceding years in computing the assessment for the year ending April 1912, and similarly for succeeding years.

7. That contributions or subscriptions to any other organisation be only allowed as expenses on production of the accounts of such organisation, and on evidence that it has entered into similar arrangements with the Board of Inland Revenue, or has no surplus income which ought, on the lines of this scheme, to be subjected to tax.

8. The existing and future accumulated funds of the Association to be regarded as taxed income in the event of the Association being wound up and the funds distributed among the members.

9. No allowance to be made or relief granted in respect of the excess in the expenditure of any year over the contributions, except so far as is necessary for the computation of the three years' average.

10. In the event of any dispute as to the admissibility or non-admissibility of any item of expenditure, both parties to these arrangements undertake to submit the question to the Commissioners of Inland Revenue and to accept their decision as final.

Deductions.

11. Each Association to give an undertaking to abide by these regulations.

12. This arrangement may be terminated either by the Board of Inland Revenue, or by the Association, on twelve months' notice, expiring on the 5th April in any year.

In *Re Vallambrosa Rubber Co., Lim. v. Farmer* (Court of Session, Scotland, 16th March 1910) the company sought deduction for :—

**Vallambrosa
Rubber Co.,
Lim.**

Weeding, &c.

- | | |
|---|--------|
| 1. Superintendence, allowances, weeding, &c.... | £2,022 |
| 2. Cutting out rubber, and tapping | 118 |
| 3. Clearing and draining, and making roads ... | 492 |

Eventually the Crown conceded (2), and the company agreed that (3) was capital. The Commissioners allowed one-seventh of the £2,022, on the ground that one-seventh of the trees were in full bearing.

The Lord-President allowed the whole deduction. He said it had been argued (1) that no expense was deductible unless referable to a profit within the year, and (2) there was a question whether this was capital or income. The first proposition had only to be stated to be defeated by its own absurdity, because, if it were true, a person whose business was connected with a fruit could not deduct the expense of raising it unless it was ready precisely within the year of assessment. The real truth was it was just one of those mistakes which were made by fixing one's eyes too tightly

Deductions.

upon the actual rules and cases of the Act of 1842 (which were, after all, only guides), because the real point was, what were the profits and gains of the business. On the second point the Crown had no materials for their case; and, further, at the Bar it had been explained that these expenditures were necessary every year. In a rough way it was not a bad criterion as between capital and income to say that capital expenditure was a thing that was to be spent once for all, and income expenditure was a thing which was going to recur every year.

Damages for subsidence allowed.

The damages and costs in connection with a claim for subsidence in the case of a colliery have been allowed by the Special Commissioners.

Preliminary expenses and new books of company.

Though there is not any deduction allowed for the preliminary expenses of the formation of a company, the cost of new books—usually included under this head—is allowed.

Goodwill, patents, &c.

Deduction is not allowed in respect of the writing down of goodwill, patent rights, &c.

Loss by fire of mill and stock.

The loss arising from the destruction of a mill by fire is a loss of capital, and may not be deducted, but the loss arising from destruction of stock is regarded as a trading loss, and the amount thereof may be deducted in ascertaining profits.

Loss by embezzlement.

A loss by reason of embezzlement used to be looked upon as a loss by stratagem, and not one connected with, or arising out of, trade, and it used to be said that the amount could not be deducted. Such a loss, however, is now allowed as a matter of course.

A question arose in practice some years ago as to the rights of a trader, who unsuccessfully contested an action for wrongful description of his goods, to deduct the costs of the action and the damages.

Deductions.
Costs of
defending
action and
damages
allowed.

The decision of the local Commissioners was in favour of the trader, and, the Surveyor having asked for a case to be stated, he was instructed from Somerset House not to press the point.

There is not any difficulty raised by the authorities as to allowance for loss caused by bad debts. In the case of doubtful debts any amount honestly estimated to be bad will be allowed (under 1853, sec. 50), and the difference between the estimate and the amount actually found to be irrecoverable, whether more or less, would be an item for adjustment in the next account. The authorities will not, however, allow as a deduction amounts carried to a Reserve Account, as is sometimes done in large concerns for the purpose of equalising the loss in different years, *e.g.*, a percentage on the sales, or an arbitrary amount. Where such a provision is made in the accounts it should be written back to the credit, and the actual bad debts charged on the debit.

Bad debts.

Bad debt
reserve.

In *Reid's Brewery Company v. Male* (Queen's Bench Division, 6th and 9th February 1891) the company sought to deduct bad debts sustained on loans advanced to their customers on the security of public-houses. It was shown to be the custom of brewers to carry on the business of bankers and money-lenders as an adjunct to their brewing business, such business being confined strictly to brewery customers.

Reid's
Brewery Co.,
Lim. v. Male.

Bad debts
allowed.

Deductions.

The Special Commissioners considered the sums advanced were employed as capital for the purpose of extending their business as brewers, and refused to allow the deduction. The Court held that the money-lending business was an adjunct of the brewery business, and the company were entitled to the deduction claimed.

Spelter Co. v. Baker.

Advance to
associated
company not
a "bad debt."

In *English Crown Spelter Co. v. Baker* (King's Bench Division, 21st May 1908) deduction was sought in respect of a sum of £38,299 as a bad debt under the following circumstances. In order to secure to the Crown Company a good supply of blende (sulphide of zinc) a new company was formed to take over certain mines, the Crown Company and its directors subscribing for the whole of the shares. The directors and secretary of the Crown Company filled corresponding offices in the new company. From time to time the Crown Company advanced the new company various sums at interest "against blende to be delivered," but not against specific parcels of ore. The new company went into liquidation and the whole £38,299 was lost. The Court upheld the view of the Commissioners that the case was not within *Reid's Brewery Company v. Male* (above); that the amount was not wholly laid out for the purposes of the trade; and, further, that it was an employment of capital in a separate concern; and it could not be allowed as a deduction.

**Dwelling-
house used for
business.**

Where part of a dwelling-house is used for the purposes of trade, the Commissioners may allow as a deduction such sum, not exceeding two-thirds of the rent paid, as they shall think proper (1842, sec. 101).

The question has been raised whether an hotel proprietor residing with his family on the premises is “ using a dwelling-house for the purpose of trade,” and is thus only entitled to deduct two-thirds of the Schedule A assessment from his profits. The point is not free from doubt whether an hotel can be a “ dwelling-house ” within the meaning of the Act. A fair way of treating such a case would be to *deduct* the whole of the rent or Schedule A assessment, but to *add* to the profit an amount equal to the estimated benefit the proprietor has derived from so living and thus not needing a dwelling-house.

Deductions.
Hotel proprietor residing on premises.

The following case removes any doubt which might otherwise exist as to the position where the manager of an hotel lives on the premises.

In *Russell (Surveyor of Taxes) v. The Town and County Bank, Lim.*, the Income Tax Commissioners sought to prevent the bank from deducting from their profits for assessment under Schedule D, the value of certain portions of the bank premises which were used as dwelling-houses by some of the officers of the bank, but the House of Lords held (26th April 1888) that, for the purpose of arriving at the amount of the profits of the bank, all expenditure must be taken into account, and that that part of the bank which was used for the residence of the officers was used for the purpose of carrying on the necessary business of the bank. The contention of the Commissioners was, therefore, disallowed.

Russell v. Town and County Bank, Lim.

Value of premises used by officers allowed.

Deductions.***Brickwood v. Reynolds.*****Repairs to tied houses disallowed.**

In *Brickwood & Co. v. Reynolds* the appellants, a brewery company, claimed to deduct £1,492, being the balance of a sum of £2,496 (expended by them on the repair of certain tied houses, of which they were owners) after deducting £1,004, being one-sixth of the annual value of the houses under Schedule A. It was contended on their behalf—

- (a) That the purchasing and letting of licensed houses was an essential part of their business, and alternatively that it was a separate business ;
- (b) That but for such purchasing and letting, their profits, as assessed under Schedule D, would not and could not have been earned ;
- (c) That the repairs in question were a necessary outlay, without which such profits could not have been earned, and formed a legitimate deduction in arriving at the balance of profits in respect of which they were chargeable under Schedule D ; and
- (d) That the tied houses in question were “ occupied ” by them for the purpose of their trade, manufacture, adventure, or concern in the nature of trade within the meaning of the first case, rule 3 (allowing deduction in respect of repairs of premises occupied for the purpose of trade, &c.), and that in this respect there was not any distinction between such houses and those licensed houses which, being owned by the appellants, were not let to tenants, but were conducted on their behalf by their managers or servants.

The Queen's Bench Division held (26th July 1897) that the case was not distinguishable from *Watney v. Musgrave* (p. 224) and they gave judgment for the Crown, and this was subsequently confirmed by the Court of Appeal (17th November 1897).

Deductions.

Judgment in the case of *Smith v. The Lion Brewery* was given in the House of Lords on 14th February 1911.

**Smith v.
Lion
Brewery.**

**Licensing Act
Levy.**

The company had tied houses, and admittedly their profits were greater than they would otherwise have been. They did not possess them as investments; if any house lost its licence they disposed of it as soon as possible.

By the Licensing Act, 1904, the company were compelled to allow their tenants certain deductions from the rent. The amount at issue was £3,600 in three years—average £1,200.

No question was raised as to the compensation levy in respect of premises *occupied by the company*.

The Crown contended the levy was paid as landlords, and not as traders.

The Commissioners allowed the £1,200.

In the King's Bench Division the Crown pleaded that the company had two distinct positions—brewers and landlords—and this payment was not “expenditure wholly, &c. . .”; that the brewer's trade ended when he had delivered to the publican; that the trade of the tied house was distinct from the trade of the brewer; that the levy was a charge *on the licence*, and not on the profits of the brewery; that deduction

**King's Bench
Division.**

Deductions.**Smith v.
Lion
Brewery.****Licensing Act
Levy.**

by the tenant was from the company *quâ* landlord, and that the tenant would be equally entitled to deduction whether the landlord was a brewer or not ; also that sec. 159 excluded the deduction.

The company argued that this expense was as necessarily incurred as the expense of feeding horses to deliver beer, or fire or burglary insurance. This was in the nature of insurance against loss of capital. That the case found that the houses were necessary to earn the profit ; that this was the same as expenses of a traveller, or insurance of a *depôt* ; that in *Strong's* case (p. 240) Lord Davey had explained the meaning of "expenditure for the purpose of the trade." He said : "These words . . . appear to me to mean, 'for the purpose of enabling a person to carry on and earn profits in the trade'"; and that Lord James expressed a similar view. The Commissioners had found the houses were held solely for the purposes of the trade.

Channell, J.

Channell, J., gave judgment for the Crown. He said the business was to *brew* and *sell* beer. The expenses necessary to sell it and incurred exclusively for the purpose of selling it were deductible. The costs of a *depôt* were deductible—the payment of an agent, the expenses of tied houses. There were expressions in *Watney v. Musgrave* (p. 224) which would not bear critical examination, but the decision was right. Then, coming to *Brickwood v. Reynolds* (p. 250), one point was that the one-sixth was binding, had been dealt with under Schedule A, and could not be brought in again. That was absolutely sound. *Hancock & Co. v. Gillard* (p. 27) showed

clearly that the levy was not a charge upon the rent, though there was a statutory right of set-off. It was an insurance—if it was an insurance—of the trade carried on in the house, which was the publican's trade, not the landlord's. It *looked* as if it were a charge—an expense in reference to his trade; but the real thing for which the payment was made was to secure the *tenant's* trade (though the landlord's, of course, depended upon it). But the difficulty was whether it could be said to be exclusively for the brewer's trade when it was really paid to secure the retail trade. This was one of the grounds of the *Brickwood* decision, and to that extent it was an authority upon this point. He came to his conclusion with some doubt, and that doubt occasioned to some extent by the arguments of the Crown,

“because I think they may be somewhat afraid—not for the purposes of this case, but for the purposes of other cases—of the consequences of admitting a proposition which seems to me so very clear. It may be that they felt bound to argue propositions which, in my judgment, were not really tenable, and in consequence of their so arguing it seemed to me for a considerable time that their argument necessarily depended upon it. I do not think it does necessarily depend upon it, because I have come to the conclusion that although the annual expense of having these tied houses would be allowable as a deduction, yet this particular charge cannot be considered as a charge which would be allowable by way of deduction, not because in no sense is it incurred for the purposes of the trade, but because, though it goes towards the purposes of the trade in increasing their sales, yet it does so indirectly and not directly, and cannot be said to be exclusively for the purposes of the trade.”

In the Court of Appeal it was argued in particular that the case was absolutely concluded by the *Brickwood* case, and that it was not open to the Court to decide differently.

Deductions.

Smith v. Lion Brewery.

Licensing Act Levy.

Court of Appeal.

Deductions.**Smith v. Lion
Brewery.****Licensing Act
Levy.****Cozens-
Hardy, M.R.**

The Court reversed the decision of the King's Bench Division, and gave judgment for the company.

Cozens-Hardy, M.R., said it was necessary to consider the position both of tenant and landlord. As to the tenant, he was as clearly entitled to deduct the amount in arriving at his profits as an auctioneer or a pawnbroker or solicitor were entitled to deduct their respective payments to the Government. In each case it was a payment which must be made to enable the profits to be earned. The position of the landlord was by no means so clear. If a non-trading landowner, he could not bring it into account. But here the person was a trading landlord. The Commissioners had found that the company, "as part of their business . . ." were owners of tied houses which had been acquired by them ". . . solely for the purposes of their business"; that the houses were employed as "substantially part of their plant or outfit necessary to carry on . . ." and they were thereby "enabled to earn profit . . . which would otherwise be less," and that such possession was "essentially necessary," and they were not held as investments. "Accepting these facts," he said, "it seems to me that every argument which goes to show that the retail seller of beer can deduct what he pays in respect of the compensation levy applies with equal force in favour of the wholesale seller. . . ." Further, he thought the authorities were in no way opposed to that view.

Farwell, L.J.

Farwell, L.J., considered the findings showed that the money was "wholly and exclusively . . . &c." He put it that the company might sell x barrels without the tied

houses, and $x + y$ with. The levy was a direct expense of selling the y barrels. The Solicitor-General had ignored the brewers' trade as wholesale sellers, and had put the case of a non-trading landlord. But the non-trading landlord made no profit from a trade of wholesale beer selling, and, therefore, had nothing from which to deduct the levy. It was a false argument that because A. did not trade, therefore B., who did trade, should not be allowed a deduction. Therein arose the distinction between the *Brickwood* case and the present one. On the findings of fact in that case it was held that the brewers did the repairs *as owners*. "The facts proved in this case," he said, "render a judgment against the Crown inevitable." He did not agree with the statement of Channell, J., that the payment was made to insure the tenant's trade—it was made because the Legislature compelled it.

Deductions.

***Smith v.
Lion
Brewery.***

**Licensing Act
Levy.**

Kennedy, L.J., differed from the other two and approved the decision of Channell, J. He thought the findings "necessarily incident, &c.," and "substantially part of their plant, &c.," rather vague and metaphorical phrases than statements of facts. The scheme of the Licensing Act from the economic standpoint was the creation of a compensation mutual insurance. The argument of the company that tied houses were an essential part of their business, and that their case came within the statement of law made by Lord Herschell in the *Gresham* case—"The profits of a trade or business is the surplus by which the receipts from the trade or business exceed the expenditure necessary for the purpose of earning

Kennedy, L.J.

Deductions.**Smith v. Lion
Brewery.****Licensing Act
Levy.****Kennedy, L.J.**

these profits"—appeared at the first blush attractive, but he was not satisfied of its soundness. It is clear, he said, that not every expenditure made by a trader for the promotion of his trade was deductible—*e.g.*, see the case of *Watney v. Musgrave* (though some of the language of Kelly, C.B., was open to criticism), and *Dillon v. Corporation of Haverfordwest* (p. 233), and especially the *Brickwood* case. Also in *Strong's* case it was pointed out that it was not enough that an expense should be made in the course of trade, it must be made for the purpose of earning the profits—for the "sole and exclusive" purpose; neither is a loss *in connection* with the trade necessarily deductible, for it may be only remotely connected with the trade.

He thought the deduction was too remotely connected with the earnings of the trade profit. The rents were not part of the trade profits, and it was the rent receipts which were diminished. The tied houses were necessary, but it was their revenue as rent receivers and not their trade that was affected. Further, he did not consider it "wholly and exclusively laid out." This, he said, was clearly put by Channell, J., in the concluding portion of his judgment. But giving his own views it struck him as a premium for insuring the continuance of the right to carry on the licensed retail trade on the premises.

He could not say, with Channell, J., that the case was fairly clear; on the contrary, he thought it a difficult case.

**House of
Lords.**

In the House of Lords the Lord Chancellor and Lord Shaw were against the company, but Lord Halsbury and

Lord Atkinson were in their favour, and, accordingly, the judgment was confirmed.

Deductions.

Smith v. Lion Brewery.

Licensing Act Levy.

Lord Chancellor.

The Lord Chancellor said that the trade of the brewer was the wholesale trade of manufacturing and selling beer, and that the levy, so far as laid out for the purpose of any trade, was laid out for the purpose of insuring the retail trade, which was that of selling wines and spirits, and not beer alone. He could not, therefore, see how the levy could be “wholly and exclusively laid out” for the purpose of the trade of the Lion Brewery, which had nothing to do with wines and spirits. Further, the levy was paid by them in their character of property-owners.

Lord Shaw could not see how an owner’s payment could be said to be exclusively for the purpose of a brewer’s trade, when the payment would fall upon the owner whether he was a brewer or not.

Lord Shaw.

Lord Atkinson said that, on the findings, it was impossible to contend that the houses were not acquired and let wholly for the purposes of the brewers’ trade. The impost differed but little from an auctioneer’s, or pawnbroker’s, or publican’s licence. The payment by the tenant and subsequent deduction from the landlord was mere machinery. No doubt it was paid by the brewers *quâ* landlords, but they had acquired the houses for the sole and exclusive purpose of setting up the tied-house trade—the same argument would apply if a plot of land were leased to enlarge the brewery. The payment was in effect an insurance premium. If a publican

Lord Atkinson.

Deductions.**Smith v.
Lion
Brewery.****Licensing Act
Levy.****Lord
Atkinson.**

insured licensed premises against fire, his paramount purpose was to insure against the loss of his trade, but it was not contended that such a payment should not be deducted. It had been objected that this levy was inadmissible because it was in respect of wines, &c., as well as beer, but the brewers assumed the responsibility of the house solely to get a market for their beer. Much reliance had been placed on *Brickwood v. Reynolds*. In that case repairs were executed by the lessors on the entire fabric, parts of which were used as dwelling-houses by the tenants, the publicans. Quoting observations of Smith, L.J., and Rigby, L.J., he said it was clear, in his view, that it was not expressly decided in that case that the money expended on the repairs executed on the portions of the houses used for trade purposes could not be deducted. Moreover, the brewery company in that case were not expressly bound to repair, nor did it appear that the repairs were necessary. In any case, that expenditure was not analogous to that incurred in the present case in the obligatory discharge of an incumbrance imposed upon that interest in the premises which the company acquired for the sole and exclusive purpose of increasing the volume of their sales. That case was not binding upon the House, but, even if it were, he considered it distinguishable.

**Deductions
allowed in
case of
railways.**

In their eighth report (for the year 1864-5) the Commissioners of Inland Revenue state that railway companies are allowed to deduct :—

- (1) Parliamentary and other expenses in opposing new schemes which would be prejudicial to the interest of an established company.

- (2) Similar expenses with a view to the extension, or amalgamation, of existing lines, if the company fails to obtain the Act, but not otherwise. **Deductions allowed in case of railways.**
- (3) Contributions to funds for the benefit of the servants of the companies called "Benevolent and Servants' Insurance Funds."

The report also contains the following paragraphs:—

" . . . We . . . drew attention to the peculiar case of leased lines, where the law authorises the lessees to deduct the tax from the rent which they pay. The lessors, however, are obliged to keep up an establishment of directors, secretaries, and clerks, for the purpose of keeping the accounts of the concern, and of distributing the income among the shareholders, as well as of conducting the business relating to transfer of shares and other matters; and for the expenditure on such machinery they have, in law, no right to claim any allowance of the tax.

"Your Lordships concurred in the propriety of recognising the claims of companies so situated to relief."

Where a person has effected an insurance, or contracted for a deferred annuity, on his own life or that of his wife, he is entitled to deduct the amount of the annual premium paid by him from his profits before paying duty, and if he has paid tax without making such deduction he is entitled to a repayment if claimed within three years. Allowance is not to be made beyond one-sixth of his total income, and the allowance does not entitle him to the greater abatement if his income is thereby reduced below £500, &c. (1853, sec. 54, and a further Act of 1853, 16 & 17 Vict., cap. 91, sec. 1. See, further, Chapter VIII.). Until 1906 (see *post*) this abatement was not allowed when the premium was paid to a foreign **Life Insurance premiums.**

*Colquhoun v.
Heddon.*

company (*Colquhoun v. Heddon*, Court of Appeal, 6th, 9th, and 12th May 1890). Sec. 54 of the first-named Act provided for the abatement in respect of an insurance with any insurance company which should become registered under any Act to be passed in the then present session of Parliament. By the further Act it was provided that as it might happen that an Act for the registration of insurance companies might not be passed in that session, the provisions were to apply to an insurance, &c., contracted with any insurance company existing on the 1st November 1844, or registered under the Act of 7 & 8 Vict., c. 110 (for the regulation of joint stock companies). The Court held (Fry, L.J., doubting) that, unless it clearly appears otherwise, general words used in an Act of our Parliament should be taken to deal only with such things as are within the jurisdiction of our Parliament, and therefore the New York Life Insurance Company, incorporated by special Act of the Legislature of New York in 1841, did not fall within the description of a company "existing on the 1st November 1844."

*Hunter v.
Rex.*

Where a person insured his life at a premium of £66, £33 only being actually paid by him, and the balance being left as a loan by the insurance company, it was held, affirming the decision of the Court of Appeal (which had reversed that of the King's Bench Division) that he could only deduct the portion of the premium which had been actually paid (*Hunter v. Rex*, House of Lords, 15th March 1904).

An endeavour has been made to obtain a similar abatement in respect of contributions to a “Thrift Fund,” but the answer of the authorities was that, though they were willing to widen the concession, they could not do so against the distinct intention of the Legislature. That intention was to encourage thrift—not *generally* (or it would have been so expressed), but *in a particular manner*. The contribution was an investment, though compulsory.

Contribution
to “Thrift
Fund.”

The question came before the Court of Appeal on the 13th and 18th February 1903 in *Bell v. Gribble* (*Surveyor of Taxes*) and *Hudson v. Gribble*.

*Bell v.
Gribble.*

*Hudson v.
Gribble.*

“Thrift
Fund.”

By a Manchester Corporation Act of 1891 the Corporation were empowered to organise a “Thrift Fund.” Persons in the employment of the Corporation in 1891 had the option of joining, and those coming into employment since then were compelled to do so. Mr. Bell belonged to the latter class and Mr. Hudson to the former.

By the Act the scheme was to provide :—

That where a member retired from the Corporation or died, he or his representatives should receive his contributions with interest.

That where a member was *dismissed* for fraud, &c., such contributions might be forfeited.

The Corporation fixed $3\frac{1}{4}$ per cent. of the salary as the contribution.

**Bell v.
Gribble.**

**Hudson v.
Gribble.**

**“Thrift
Fund.”**

The deduction from the assessment was claimed under the first and ninth rules of sec. 146, viz. :—

“(1) The said duties shall be annually charged on the persons respectively having, using, or exercising the offices or employments of profit mentioned in the said Schedule E, or to whom the annuities, pensions, or stipends mentioned in the same schedule shall be payable for all salaries, fees, wages, perquisites, or profits whatsoever accruing by reason of such offices, employments, or pensions, after deducting the amount of duties or other sums payable or chargeable on the same by virtue of any Act of Parliament where the same have been really and *bonâ fide* paid and borne by the party to be charged; and each assessment in respect of such offices or employments shall be in force for one whole year, and shall be levied for such year without any new assessment, notwithstanding a change may have taken place in any such office or employment, on the person for the time having or exercising the same: provided that the person quitting such office or employment, or dying within the year, or his executors or administrators, shall be liable for the arrears due before or at the time of his so quitting such office or employment, or dying, and for such further portion of time as shall then have elapsed, to be settled by the respective Commissioners, and his successor shall be repaid such sums as he shall have paid on account of such portion of the year as aforesaid.

“And each assessment in respect of such annuity, pension, or stipend shall be in force for one whole year, unless the same shall cease or expire within the year, by lapse, death, or otherwise, from which period the assessment thereon shall be discharged.

“(9) In estimating the duty payable for any such office or employment of profit, or any pension, annuity, or stipend, all official deductions and payments made upon the receipt of the salaries, fees, wages, perquisites, and profits thereof, or in passing the accounts belonging to such office, or upon the receipt of such pension, annuity, or stipend, shall be allowed to be deducted, provided a due account thereof be rendered to the said Commissioners, and proved to their satisfaction.”

Reliance was placed on the decision in *Beaumont v. Bowers* (p. 55), where it had been held that the annual deductions from salaries for contributions under the Poor Law Officers' Superannuation Act 1896 were “duties or other sums payable or chargeable.”

Bell v. Gribble.

Hudson v. Gribble.

“Thrift Fund.”

The Surveyor argued that the contributions were *savings*; that under the Poor Law Officers' Superannuation Act poor law officers were only entitled to a *life pension*, and their representatives derived no benefit after their death, but it was not so in this case. Also that the Poor Law Officers' Superannuation Act 1896 was a *general* Act, and the Manchester Act was a *local* Act. Further, that the claim did not fall within the provisions of sec. 54 of the Act of 1853, entitling a person to deduction for life insurance premiums.

In the Queen's Bench Court *Hudson's* case was decided in favour of the Surveyor, on the ground that the entrance into the scheme was optional. *Bell's* case was decided the other way, without argument. Appeals were lodged. Judgments were given *for the Crown* in both cases. The Court said the sums were neither—

(1) “Duties payable by virtue of an Act of Parliament,”
nor

(2) “*bonâ fide* paid and borne by the party.”

As to the second point, the payment of the sums was simply *postponed*.

*Bell v.
Gribble.*

*Hudson v.
Gribble.*

“Thrift
Fund.”

As to the first point, the sums were payable not “by virtue of an Act of Parliament,” but as part of the contract of service.

Section 54 of the Act of 1853 reads :—

“ Any person who shall have made insurance on his life, or on the life of his wife, or shall have contracted for any deferred annuity on his own life, or on the life of his wife, in or with any insurance company and any person who shall under any Act of Parliament be liable to the payment of an annual sum, or to have an annual sum deducted from his salary or stipend, in order to secure a deferred annuity to his widow, or a provision to his children after his death, shall be entitled to deduct the amount of the annual premium paid by him for such insurance or contract, or the annual sum paid by him, or deducted from his salary or stipend as aforesaid, from any profits or gains in respect of which he shall be liable to be assessed under either of the Schedules D or E of this Act, or to have any assessment which may be made upon him under either of the said schedules reduced or abated by the deduction of the amount of the said annual premium from the amount of the profits or gains on which such assessment has been made :

“ Or if such person shall be assessed to duties under any of the schedules contained in this Act, and shall have paid such assessment, or shall have paid or been charged with any of the said duties by deduction or otherwise, such person, on claim made to the Commissioners for special purposes, and on production to them of the receipt for such annual payment, and on proof of the facts to the satisfaction of the said Commissioners, shall be entitled to have repaid to him such proportion of the said duties paid by such person as the amount of the said annual premium bears to the whole amount of his profits and gains on which he shall be chargeable under all or any of the schedules of this Act :

“ Provided always that no such abatement, allowance, or repayment as aforesaid shall be made in respect of any such annual premium beyond one-sixth part of the whole amount of the profits and gains of such person so chargeable as aforesaid :

“Nor shall any such deduction or abatement entitle any such person to claim total exemption or any relief from duty on the ground of his profits and gains being thereby reduced below one hundred or one hundred and fifty pounds, as the case may be.”

As to this, the Court said that if this case was governed by the words of the first rule of Schedule E, nearly all this sec. 54 was unnecessary (*i.e.*, except as to voluntary payments for insurance of wife or child). But this was not the case. The Legislature made no mistake when enacting sec. 54.

Beaumont v. Bowers was wrong and was overruled.

***Beaumont v. Bowers*
overruled.**

The case of *Smyth (Surveyor of Taxes) v. Stretton* (King's Bench Division, 18th and 19th April 1904), on a similar point, is one of considerable difficulty. Mr. Stretton was an assistant master at Dulwich College, where a Provident Fund for the benefit of assistant masters was established in 1899. The scheme provided (*inter alia*):—

***Smyth v. Stretton.*
Increase of salary not paid in cash.**

(1) For certain “increases of salaries,” viz. :—

- (a) 5 per cent. to masters of 5 to 15 years' standing.
- (c) A further 5 per cent. to such masters, but such amount was not to be paid to any master retiring (except from ill-health) unless he had completed 10 years' service.
- (3) That all assistant masters should be required to be members of the fund.
- (4) That the increases should be retained and accumulated at interest.

*Beaumont v.
Bowers
overruled.*

*Smyth v.
Stretton.*

*Increase of
salary not
paid in cash.*

(5, 6, and 7) As to what portions of such increases should be payable to the assistant masters or their representatives in the event of retirement, death, dismissal, &c.

Mr. Stretton claimed that £35 of his salary of £385 (*viz.*, an "increase" of 10 per cent. under (1) (a) and (c) above) was not liable to taxation.

Channell, J., decided (with hesitation) in favour of the Crown.

He said the question was whether the true effect of the scheme was to increase the salaries, and at the same time compel the masters to deal with the increase in a certain way; or whether it was to give the masters a gratuity upon their ceasing to hold their positions.

It was clear, he said, that the first 5 per cent. was a pure addition to the salary, and chargeable as such. The second 5 per cent., if it stood alone, would be very arguable, but though he was not clear about it, he thought that being put, as it was, with the other sum, and distinctly stated as "salary," it did not cease to be chargeable, although on the happening of certain events it might never become payable to the master.

*Premiums
paid to
Friendly
Society*

Any person who has effected such an insurance, &c., (p. 259), with a British friendly society is entitled to the like privileges. Formerly, in order to obtain the privilege, the premiums payable were not to be for a shorter period than three months (an Act of 1855, 18 & 19 Vict., cap. 35, sec. 1),

but by the Revenue Act 1903, sec. 10, this section is repealed, and it is provided that :—

“Where the premiums payable in respect of any insurance to which that section extends are made for shorter periods than three months, the production of a certificate signed by an officer of the Society to the surveyor of taxes for the district specifying the correct amount of premiums paid during the year shall be a condition of obtaining relief under that section.”

In 1859 the privilege was extended in respect of any annuity, &c., contracted for with the Commissioners for the Reduction of the National Debt (22 & 23 Vict., cap. 18).

Premiums paid to National Debt Commissioners.

By the Finance Act 1904, sec. 9, the privilege was further extended to apply

Premiums paid to colonial or foreign company.

“in relation to the life insurances or contracts for deferred annuities effected in or with any insurance company legally established in any British possession. . . .”

And it was further extended in 1906 by the Revenue Act 1906, sec. 11, which provides that :—

“The provisions of sec. 9 of the Finance Act 1904 shall apply in relation to life insurances or contracts for deferred annuities effected in or with any insurance company lawfully carrying on business in Great Britain or Ireland, and accordingly such section shall be read and construed as though the words ‘or lawfully carrying on business in Great Britain or Ireland’ were inserted therein after the words ‘British possessions.’”

The provisions apply to an accident policy if it covers *fatal* accidents, and claims in respect of such are allowed as a matter of course. They do not, however, apply to a child’s endowment policy or to any endowment policy pure and simple, or to a sickness benefit policy.

Accident policy

**Single
premium
policy**

Single premium policies used to be considered to be within the Act, but the Board are now resisting claims.

**Deferred
Annuity**

Also, where a life office issues a deferred annuity, one condition being that if the policy-holder dies or surrenders before the deferred age is reached the premium is to be repaid with compound interest at 3 per cent., the Crown refuses to allow such a premium as a deduction.

Probably this is correct, as it is (or at least may be) simply a deposit at interest.

**Sickness
policy.**

In the case of a combined life and sickness policy they will allow so much of the premium as the company certify to be due to the life risk.

**Annual value
of study
allowed.**

The Board of Inland Revenue some time ago gave a favourable reply to a Free Church minister, who asked an abatement of £20 from his income in the fixing of his income tax, as the rental value of his study and an allowance for books and stationery required in the discharge of his professional duties. "In the opinion of the Board," it was answered,

"a dissenting minister chargeable to income tax under Schedule D, and occupying a house yielding accommodation in excess of that required for private purposes, who devotes a room wholly and exclusively to the purposes of his profession, is entitled to deduction in respect of the annual value thereof, to be settled and ascertained by the Commissioners. Further, that the cost of writing materials is also allowable, but not any expenditure in books, which is regarded as a capital outlay."

Now, the Finance Act, 1907, sec. 28, provides :—

Where a clergyman or minister of any religious denomination pays rent for a dwelling-house, and uses any part

thereof mainly and substantially for the purposes of his duty or function as such clergyman or minister, such part of the rent of the dwelling-house, not exceeding one-eighth, as the Commissioners by whom any assessment for income tax is made may allow, shall be treated for the purposes of sec. 52 of the Income Tax Act 1853, as expenses to which the provisions of that section as to deduction and repayment apply.

With respect to the payment of annual interest, it will be noticed that though it cannot be deducted from the profits of a trader, yet he gets the same benefit as if he could so deduct it, for he retains the tax before paying the interest (1853, sec. 40). This section is as follows:—

**Deduction
of tax on
interest
payable.**

“Every person who shall be liable to the payment of any rent, or any yearly interest of money, or any annuity or other annual payment, either as a charge on any property or as a personal debt or obligation by virtue of any contract, whether the same shall be received or payable half-yearly or at any shorter or more distant periods, shall be entitled and is hereby authorised, on making such payment, to deduct and retain thereout the amount of the rate of duty which, at the time when such payment becomes due, shall be payable, for every twenty shillings of such payment; and the person liable to such payment shall be acquitted and discharged of so much money as such deduction shall amount unto, as if the amount thereof had actually been paid unto the person to whom such payment shall have been due and payable; and the person to whom such payment as aforesaid is to be made shall allow such deduction upon the receipt of the residue of such money, under pain of forfeiting the sum of fifty pounds for any refusal so to do.

**Act of 1853,
sec. 40.**

“Provided always that no tenant or occupier of any property chargeable under Schedule A of this Act shall be entitled to deduct or retain out of the rent thereof any greater sum than the amount of the duty which shall have been assessed and charged upon or in respect of such property, and actually paid by such tenant or occupier.”

Act of 1864,
sec. 18.

Further, by sec. 15 of the Act of 1864 (27 & 28 Vict., cap. 18) it is enacted that :—

“The persons liable to and making any such payment as aforesaid shall be entitled, and are hereby authorised, to deduct and retain thereout the amount of the rate or a proportionate amount of the several rates of income tax which were chargeable by law upon, or in respect of, such rent, interest, annuity, or other annual payment, or the source thereof, during the period through which the same was accruing due. . . .”

In this way the principle of taxing the income at its source is carried out, and each person pays ultimately on the amount he receives.

Landlord
and tenant.

For example, A. purchases a house from C., leaving £800 of the purchase-money on mortgage at 5 per cent. He lets the house at £60 per annum to B., his tenant. B. pays the income tax under Schedule A on £50 (since the 5th April 1894 there is an allowance of one-sixth off the gross rent for repairs), but deducts it from his landlord when he pays his next rent. He has not any income in respect of the house, and does not bear any tax. A.'s income in respect of it is :—

Mortgagor
and
Mortgagee.

Rent (£60, less one-sixth for repairs)	...	£50
Less interest	... ..	40
		<u>£10</u>

He has paid tax by way of deduction on £50, but he in his turn deducts tax on the interest when paying it, and thus only bears tax on £10, the amount of his income. C., of course, pays tax on his £40 by this deduction. The Revenue thus receives the amount in one sum from B.

In *Foley v. Fletcher* (Court of Exchequer, 17th November 1858) the facts were as follows :—F. sold certain mines for £49,500, payable £3,385 down, and the residue by half-yearly instalments of £768 11s. 8d. during a period of 30 years. The purchaser sought to deduct tax on payment of the £768 11s. 8d. It was contended on his behalf that F. had converted her capital into an annual payment. By so mixing capital with profits they became inseparable, and the Court should therefore take judicial notice that the annual payments were gains and profits made by allowing the payments to be deferred. This was not equal to a specific debt being paid by instalments.

Foley v. Fletcher.
Capital is not liable although found in company with profits.

In giving judgment, Pollock, C.B., said :—" Duties are to be levied on profits and not on anything else." It had been contended that the estate was worth £23,000 and the rest was therefore profit, but there was nothing to show this to be so. Possibly the instalments were mere indulgence on the part of the seller. But even if it were granted that part were profit, they would not *then* come within the Act. " We cannot say capital is liable because found in company with profits." Section 102 must be read :—" Upon all annuities, yearly " interest of money, or other annual payments *ejusdem generis*, &c. . . ." Section 40 of the Act of 1853 must be read :—

" Every person who shall be liable to the payment of any rent, or any yearly interest of money, or any annuity, or other annual payment *ejusdem generis* (as profits) either as a charge on any property or as a personal debt or obligation by virtue of any contract *ejusdem generis*, &c. . . ." " If,"

*Foley v.
Fletcher.*

Capital is not
liable
although
found in
company
with profits.

he continued, "the annual payment is the repayment of principal, the return of a debt, and is not profit, it is not at all within the purview of the Act, the very title and all the provisions of which announce that it is for imposing a tax on profits. . . ."

"An annuity is made chargeable in express terms."

Bramwell, B., said it had been argued that the payment should be divided into principal and interest. *Assuming* this, it was admitted, on behalf of defendants, that plaintiff might have been assessed. This being so, it could not be that defendant could deduct tax before paying. Mr. Phipson (for the defendant) said that sec. 40 was positive. Reading the section alone nothing was plainer. Why, then, did it not apply?

"In some way we *must* hold that it does not apply, because otherwise the plaintiff would be liable to pay income tax twice over. Now, the expression 'liable to payment' (in sec. 40) is peculiar. I think it means 'where any person is the owner of any property out of which a sum of money is payable, which is an annuity or annual payment, as a personal debt or by virtue of any contract.' It appears absolutely necessary to put a non-natural construction upon the language of this section."

*Goslings &
Sharpe v.
Blake.*

Tax on
interest
other than
annual.

In *Goslings & Sharpe v. Blake* (Court of Appeal, 24th and 25th June 1889) it was held that the provision for deduction of tax only applied to annual interest, and that in the case of loans for short periods the tax must not be deducted by the borrower, but the interest must be returned for assessment by the lender, but this case arose before the Act of 1888, and the case of *Lord Advocate v. Lord Provost of City of Edinburgh* (*post*) makes it clear that the Crown can ask

that tax shall be deducted and accounted for on *all* interest *if not paid out of profits* brought into charge.

In *The Galashiels Provident Building Society v. Kenneth Newlands* (Court of Session, Scotland, 15th June 1893) it was held that if a debtor makes a payment of interest without deduction of income tax he loses his right to recover tax in respect of such interest. The Court said he had failed to prove any such right in the strict terms of the statute (1853, sec. 40, p. 221), and he had not produced any other evidence. The case is analogous to those of *Cumming v. Bedborough*, *Denby v. Moore*, and *Andrew v. Hancock* (see p. 30).

Galashiels Building Society v. Newlands.

Tax not deducted on payment of interest cannot be afterwards recovered.

One of the oldest decisions as to the deduction of income tax on payment of interest is that of *Dinning v. Henderson* (Ch.D. 9th February 1850). This was a case where the Royal Bank of Scotland had proved under a decree for a sum due, in respect of principal and interest, upon a bill of exchange, accepted by the testator in the cause, and which fell due after his decease. The Master had deducted income tax on the interest, and the petition sought that the Master might review his report in this respect. The bill was drawn 6th March 1839 at six months and accepted by the testator, who died before it became due. It was afterwards dishonoured, and a decree having been made for administering the assets of the testator, the holders of the bill claimed the amount with interest, as creditors of the estate.

Dinning v. Henderson.

Tax may be deducted on interest on bill of exchange.

The Vice-Chancellor said he would have thought that, according to the true construction of the Act, the interest

T

Dinning v. Henderson.

should have been allowed in full, and the bank left to pay the income tax themselves. But as it appeared that in the offices of three of the Masters the course had been to deduct tax, and there was reason to believe that the same course had been uniformly pursued in other offices, it would be too much for him to take upon himself to disturb a practice thus adopted for so many years, whatever his own opinion might be, and he declined to do so.

Doubtful whether correctly decided.

In *Goslings & Sharpe v. Blake* (above) some doubt was expressed as to whether this case was correctly decided.

Bebb v. Bunny.

Annual interest includes all interest calculated at a rate per cent. per annum, but see below.

Another old case is that of *Bebb v. Bunny* (Chancery Division, 22nd December 1854). It was a case for specific performance by a vendor against a purchaser. Before the Judge in Chambers the question was raised as to the right of the purchaser (under sec. 40 of the Act of 1853) to deduct the income tax upon interest on the purchase money, payable for the time which had elapsed since the day fixed for completion of the purchase. Vice-Chancellor Sir W. Page Wood said that a mortgage deed rarely reserved a yearly interest. Most deeds contained a covenant to pay the principal, with interest at a certain rate per cent., on a day certain. After that it accrued *de die in diem*, and the interest, without any particular reservation, was ordinarily paid from year to year. It was difficult to see any difference between interest so reserved and paid and that which, by special agreement, accrued on purchase money, and might run on for a year or stop at any time. He thought the section referred to all interest calculated at a yearly rate per cent.

This decision was relied on by the appellants in the above case of *Goslings & Sharpe v. Blake*, but the Court of Appeal drew a distinction between the two cases, on the ground that in the earlier case the interest might have gone on for a year or more, but in the latter case the loan was for a definite period less than a year, and, therefore, was not "annual interest."

Goslings & Sharpe v. Blake.

Tax on interest other than annual.

In *Crane v. Kilpin* (Equity Cases, Vol. VI.), heard 1st May 1868, a debtor had assigned a fund in Court to trustees to pay £300 a year to his creditors to pay their debts, with interest at 5 per cent. In making the payments there had not been any deduction of tax. It was contended on the one hand that the trustees were entitled to deduct tax, and, on behalf of the creditors, that they should receive interest without deduction. The Court held that, on finally settling with the creditors, the trustees could deduct tax on the payments of interest.

Crane v. Kilpin.

Interest on instalments under composition.

Tax may be deducted.

In *Re Craven's Mortgage; Davies v. Craven* (Chancery Division, 18th July 1907) it was held that, where a principal sum secured by mortgage was made payable upon a certain death with simple interest, the executor was entitled to deduct tax from such interest on payment.

Re Craven's Mortgage.

Interest payable in lump sum.

In giving judgment, Warrington, J., reviewed and contrasted *Goslings & Sharpe v. Blake* and *Bebb v. Bunny*. He said that the two cases were not inconsistent; in the former the Court of Appeal held that the transaction was a commercial transaction wholly apart from an ordinary mortgage transac-

***Re Craven's
Mortgage.***

tion, or a covenant to pay interest for a period which might last for more than a year. Lord Esher had said that the word "other" (sec. 40) must mean something of the same kind as had gone before, and the interest on a short loan was not of the same character at all. Bowen, L.J., had also expressly stated that their decision was not overruling *Bebb v. Bunny*.

***Queensland
National
Bank, Lim.***

The case of *Re Queensland National Bank* (K.B.D. 17th February 1909) is reported as follows in the *Financial News* of the 18th February 1909 :—

"Yesterday, in the King's Bench Division, Mr. Justice Channell resumed the hearing of the petition of right of the Queensland National Bank in regard to income tax. The case for the bank was that so far as interest on its interminable stock payable in the United Kingdom was in fact paid out of the profits which were made in the United Kingdom, the bank was entitled to deduct the income tax due from the persons who held the stock, because it was paid out of profits in the United Kingdom. The case for the Crown was that the bank were only entitled to keep so much of the income-tax as was proportionate to the amount actually paid in this country as English profit, compared with the whole profit of the company.

"His Lordship, in giving judgment, said the question at issue did not depend upon any doubt about the law, but upon the application of the law in this particular case. The Queensland Bank had a branch in this country, and the

question he had to decide was how far the Queensland Bank was bound to account to the Crown for the interest which it had to pay to its stockholders upon interminable stock. Here they had to deal with an entire concern which paid interest out of the profits derived from that concern, and in his opinion he must make a declaration that the bank was not entitled to make the deduction claimed.”

In *Scoble v. Secretary of State for India* the facts were as follows :—The old East India Company (whose powers are now vested in the Secretary of State for India) leased land in 1849 for 99 years for the construction of the Great Indian Peninsular Railway, reserving power under the contract to purchase the undertaking in 50 years either for a lump sum down or by annuities payable in half-yearly instalments.

Scoble v. Secretary of State for India.

Great Indian Peninsular Railway case.

The material clause (No. 26) in the contract was as follows :—

Terms of agreement.

“ . . . it shall be lawful for the East India Company, instead of paying a gross sum of money in respect of the premises, to declare by notice to the said railway company in London their option to pay an annuity from the time when the gross amount would be payable, and to continue during the residue of the said term of 99 years, and in that case such annuity shall be payable in London . . . the rate of interest which shall be used in calculating such annuity being determined by the average rate of interest during the preceding two years received in London upon the public obligations of the East India Company. . . .”

In August 1899 the Secretary of State gave notice that he would purchase. The price was fixed at £34,859,217, pay-

*Scoble v.
Secretary of
State for
India.*

**Terms of
agreement**

able on June 30th 1900, but the Secretary of State declared his option to pay an annuity for the residue of the term of 99 years.

The rate of interest under Clause 26 was ascertained to be £2 17s. per cent., and the annuity was, therefore, fixed at £1,335,563 18s. 4d. (subsequently reduced by agreement to £1,268,508 11s.).

It was held (King's Bench Division, 16th June 1902) that the half-yearly instalments were plainly an annuity, and were therefore subject to income tax; but this decision was overruled by the Court of Appeal, whose decision was ultimately affirmed by the House of Lords (13th June 1903).

The case is of such importance that it will be convenient to deal with the facts and judgments at some length.

**Argument
for company.**

On the 1st January 1901 and 1st July 1901 instalments of £634,254 5s. 6d. became due. The former instalment was—as argued by the company—as to the sum of £162,450 14s. 1d., a payment on account, and as part of the capital sum of £34,859,217 17s. 6d., and as to £471,803 11s. 5d. was a payment of interest upon £34,859,217 for the six months. The second instalment, it was contended, was £164,765 12s. 6d. on account of capital, and £469,488 13s. on account of interest on the balance outstanding. They admitted that such portion of the instalment as represented interest was liable to income tax.

It was contended on behalf of the Crown that for the purpose of income tax the sums of £634,254 could not be broken up into principal and interest, but were chargeable as annuities with income tax on the whole of the amount thereof.

Scoble v. Secretary of State for India.
Argument for Crown.

In the King's Bench Division, Phillimore, J., said that Baron Watson, in the case of *Foley v. Fletcher*, had given an excellent definition of an annuity, viz. :—

What is an "annuity."

"An annuity means where an income is purchased with a sum of money and the capital has gone and has ceased to exist, the principal having been converted into an annuity."

This was exactly what had happened in this case. One way of testing whether this was an annuity was to see whether the periodical payments were equal. This, he said, was not a certain guide, but it gave some indication as to whether this was a case of an annuity or a mere payment of purchase money by instalments with interest. This case was different from *Foley v. Fletcher*. No doubt, in fixing the price payable in that case, the vendor had had regard to the fact that he must increase his price by capitalised interest, but the instalments were none the less instalments of purchase money. They differed from an annuity.

In the Court of Appeal (13th February 1903), where the decision of the King's Bench Division was reversed, Vaughan Williams, L.J., said the Attorney-General had granted that an annual sum payable by contract was not necessarily an annuity. It had been admitted that where it appeared on the face of the contract that there was a debt

Judgment of Court of Appeal.

*Scoble v.
Secretary of
State for
India.*

*Judgment of
Court of
Appeal.*

existing, income tax would be payable only on so much of the instalment as represented interest. “The whole question “in this case was (he said): Is income tax payable upon that “portion of the annual payment which you can discover from “the very terms of the contract is a mere payment of an “instalment necessary to complete the payment of an existing “debt? In my judgment no income tax is payable in such “a case.” It seemed to him obvious that a debt having come into existence the Indian Government elected to pay it by instalments, plus interest.

Stirling, L.J., said *Foley v. Fletcher* had been relied on by both sides. The principle laid down in that case with reference to the construction of the word “annuity” had never been departed from. Chief Baron Pollock had said:

“These instalments are payments of money due as capital; the Act has made no provision for such a case. It professes to charge profits only, and we cannot say that capital is liable to income tax because found in company with profits.”

Mr. Baron Bramwell had alluded to the Act charging “profits.” The principle established in *Foley v. Fletcher* appeared to him to be that the word “annuity” was not to be read so as to make capital taxable. In the present case the Attorney-General had said that if that be so in the case of every terminable annuity purchased for value the annuity should be split up. He felt the force of that remark, but it seemed to him that the cases were not the same. “Those are “cases of purchase of annuities where investment has been “made in that form of property, and the Legislature in so

“many words has said that that is to be taxed; and it is
“recognised in this very case throughout that an annuity of
“that kind is taxable. And I in no way depart from that.”

*Scoble v.
Secretary of
State for
India.*

In the House of Lords (where the judgment of the Court of Appeal was unanimously upheld) the Lord Chancellor said that the loose use of the word “annuity” undoubtedly rendered a great many of the observations of the Attorney-General and of the Solicitor-General very relevant. Still, looking at the nature of the transaction, he could not doubt that in this contract what was called an “annuity” was a mode of paying a debt. In his opinion the Income Tax Acts never intended to tax capital. In one sense, no doubt, the Legislature had taxed capital (*e.g.*, in the case of a rent derived from coal). All he could say upon that was that, perhaps from the nature of things, the income tax could not be cast upon absolutely logical lines.

*Judgment of
House of
Lords.*

Lord Lindley likewise said that the difficulty arose entirely from the ambiguity of the word “annuity.” To his mind it was proved to demonstration that this “annuity” was nothing more than the payment by equal instalments of the purchase money for the railway.

In *East India Railway Company v. The Secretary of State for India* (King’s Bench Division, 22nd June and 25th October 1904) the facts were somewhat similar, but the Crown endeavoured to distinguish the case from that of *Scoble v. Secretary of State for India*, on the ground that in this case there was not any capital sum arrived at at all, but the pur-

*East India
Railway case.*

*East India
Railway case.*

chase price was, in the first instance, fixed as an "annuity." The Court, however, considered that there was not any substantial difference between the two cases; that in both cases there was, practically, the ascertainment of a lump sum and then the provision for its payment by means of an annuity, and they gave judgment for the company.

The Purchase Act recited that the annuity of £5 12s. 6d., into which every £100 stock of the company was to be converted at the price of £125, was calculated on the basis of £5 7s. 6d. as interest at £4 6s. per cent. on £125, and 5s. as the amount required to be set aside and invested half-yearly, in order to produce £125 at the date when the annuity ceased. The Crown contended that the interest payable each half-year was a constant unvarying amount, treated as though the payment of the whole capital was postponed for 73 years, the remaining part of the annuity representing capital repaid only in the sense that it was a constant unvarying amount calculated to produce a sinking fund, which, invested at compound interest, would replace the whole capital in the 73 years. The company contended that of the half-yearly payments the proportion representing capital constantly increased and the amount representing interest constantly decreased.

It was held by Jelf, J. (King's Bench Division, 1st March 1905), that the recital to the Purchase Act left it without doubt that the contention of the Crown was correct, and that of each instalment of £424,545 11s. 11d. £405,676 18s. 11d.

was to be regarded as interest (and taxable as such) and £18,868 13s. 10d. was to be regarded as sinking fund.

*East India
Railway case.*

Both the company and the Crown appealed. The former contended that the recital was merely for the purpose of showing that the sum allowed was a proper one, and it could not have the effect of altering the character of the payments and turning that which was the liquidation of a debt by instalments into that which it had been held not to be—a mere annuity. The Crown argued that the logical outcome of the decision was to treat the whole sum as income only and taxable as such.

The Court reversed the decision of Mr. Justice Jelf (8th June 1905) accepting the contentions of the company that the statement and the arithmetical calculation by which the amount was fixed were made merely to justify the amount, and did not alter the fundamental character of the transaction. The instalments were therefore held to be—

1903	Capital	Interest	Total
Mar. ...	£49,672 1 5	£374,873 10 6	£424,545 11 11
Sep. ...	50,740 0 5	373,805 11 6	424,545 11 11

and so on.

In *Chadwick v. The Pearl Life Assurance Company, Lim.* (Chancery Division, 15th April 1905), where the residue of a lease (to December 1912) was sold for £1,000 down and £1,625 per annum till December 1912, it was held that the purchaser was entitled to deduct tax on the sums of £1,625 on payment thereof.

*Chadwick v.
Pearl Life
Assurance
Company.*

Re Sharp.
Annuities
paid in full.

It was held in *In re Sharp (deceased); Ricketts v. Ricketts* (Chancery Division, 17th March 1906) that where trustees had paid annuities without deducting tax there had been a breach of trust in so doing. But that it was an innocent breach, and the claim upon them to refund the amount was limited to six years, except where the trustee, being also an annuitant, had not paid, but had retained, the excess.

**Shrewsbury
v. Shrewsbury**
Arrears of
Annuity.

In *Shrewsbury v. Shrewsbury* (Chancery Division, 28th November 1906) it was held that tax could be deducted on payment of *arrears* of an annuity, but not in respect of amounts already paid and from which tax had not been deducted on payment.

**Bankruptcy
and payment
of tax.**

In the event of bankruptcy, tax *deducted* by the bankrupt (and therefore deemed to be in hand) is payable in full to the Crown by the Trustee.

**Barry v.
Smart.**
Alimony.

In *Barry v. Smart* (Chancery Division, 27th March 1906) it was held that a husband paying an annuity to his wife as alimony under contract was entitled to deduct tax.

**Building
societies.**

The Board of Inland Revenue have drawn up the following "Memorandum of Alternative Arrangements with respect to Income Tax in the case of Building Societies":—

ARRANGEMENT A.

1.—All interest to be exempted where the borrowing member is exempt by reason of his total income from all sources not exceeding £160, the society undertaking to see that the borrowers make the usual claim to the Surveyor of Taxes for the district in which they reside, and otherwise afford facilities to the Surveyor or Surveyors for the requisite verification of the claims.

2.—Where the borrowers are not so exempt, the properties on which the interest is secured by mortgage, or otherwise, to be retained in charge according to their respective annual values, and the society to allow the borrower to deduct the tax applicable to the interest. **Building societies.**

3.—All property in the society's hands as mortgagees in possession to be exempted, except as to ground or lease rents, if any.

4.—The society to furnish a statement, to be verified by the Board's Surveyor of Taxes once a year, of the interest paid or credited to depositors and members whose incomes exceed £160 a year, from whom the society would have the right to deduct the tax, whether the society exercised the right or not.

5.—The society to furnish a list of the interest received from the borrowers to whom the society has allowed the tax, with all necessary particulars of the properties assessed, and vouchers, in the shape of certificates of deduction of the tax on the annexed Form No. 185.

6.—Where the total interest received (par. 5) on which the society has allowed the tax, exceeds the total interest paid or credited (par. 4), and on which the society has the right to retain the tax, the society to be repaid the duty on the difference; and where the converse is the case—that is, where the tax which ought to be retained by the society exceeds the tax allowed by the society, the society to render a return of the difference for assessment under Schedule D of the Income Tax Acts.

ARRANGEMENT B.

1.—The society consents to be directly assessed under Schedule D of the Income Tax Acts upon the amount paid or credited in the year preceding the year of assessment for, or in respect of, dividends on shares, bonuses, and deposit interest. One-half of the total amount to be charged with income tax and one-half allowed to cover exemptions.

In consideration of such direct assessment:—

2.—All property in the society's hands, as mortgagees in possession, to be exempted, except as to ground or lease rents, if any.

3.—A borrower, whose total income from all sources does not exceed £160 is not to be charged for mortgage interest; if charged, the duty assessed in respect of the mortgage interest is either to be allowed as a double assessment, or repaid by the Board of Inland Revenue.

Building societies.

4.—A borrower, not entitled to exemption, to be repaid by the Board of Inland Revenue such portion of the duty charged on his property as is applicable to mortgage interest. Application for repayment to be made to the Board, and supported by a certificate from the secretary of the society as to the amount of mortgage interest paid for the year of assessment; or, the amount of interest so certified may be allowed from the assessment.

5.—Investors or depositors not to be charged for the dividends or interest they receive; if charged, on proof thereof, to be entitled to relief.

6.—When required, any society accepting this arrangement to permit any duly appointed officer of the Board to test the accuracy of the amount returned for Schedule D assessment, or to verify the correctness of any certificate given under the arrangement.

N.B.—These arrangements have been sanctioned by the Board for the convenience of building societies and their members. It should be noted that societies registered under the Building Societies Acts *are not exempt from income tax.*

The following is the form of certificate used under Arrangement B. :—

INCOME TAX.

Building Societies (Arrangement B.).

Name of society

Address

191 .

I hereby certify that M
has, during the year 191 , paid to this society the sum of £ s d
for mortgage interest on property known as
in the parish of

I further certify that the income tax chargeable under the terms of Arrangement B. has been, or will be, paid over to the Revenue.

R. N.

Secretary.

NOTICE.

**Building
societies.**

The following relief is afforded to borrowing members under the above arrangement:—

(1) A borrower whose total income from all sources does not exceed £160 per annum is not to be charged for mortgage interest. If charged, he should apply to the local Surveyor of Taxes for relief from the assessment, or, if the duty should have been paid, for a form of claim of repayment.

(2) A borrower not exempt from income tax is to receive an allowance from the property tax assessment in respect of the duty on the amount of the mortgage interest. To obtain this allowance he should, before payment of the duty, forward this certificate, together with the collector's demand note, to the Surveyor of Taxes for the district in which the property is situated.

Or, the duty on the mortgage interest will be repaid by the Board of Inland Revenue, upon a written application to the Secretary at Somerset House, London, W.C., supported by this certificate and the collector's receipt for the duty paid.

In August 1885 the case of *Re The Middlesbrough, &c., Building Society; ex parte Wythes*, reported only in the *Law Times* Reports (53 L.T. Rep. N.S. 492), came before Mr. Justice Kay, and his Lordship decided that income tax might be deducted by a mortgagor in a building society, calculated upon so much of the mortgage repayments as represented interest. Commenting on this decision some years later, the *Law Times* said:—

**Middlesbro'
Society.**

“Although the opinions of some text writers of great weight were in favour of the conclusion at which the learned Judge then arrived, it did not appear that the point had previously been decided in any case before the Courts. Presumably it is on account of that decision of Mr. Justice Kay that the Inland Revenue authorities have now made the satisfactory announcement to which we allude.” (A memorandum similar to Arrangement A.)

Building societies.

Gateshead Society.

This decision was followed in the Gateshead County Court in *Raffles v. Gateshead Conservative Building Society*, 12th March 1889, in a similar case.

Leeds Building Society v. Mallandaine.

Society liable for tax on interest.

The case of *The Leeds Permanent Benefit Building Society v. Mallandaine* was an appeal by the society against the assessment to Schedule D of interest received by them on loans to borrowing members. The business was conducted on the usual lines, the advances to members being repaid by instalments representing partly interest and partly principal. The society refused to allow deduction of income tax by their borrowers in respect of such interest, on the ground that the interest could not be distinguished, and that such interest was not yearly interest. The General Commissioners had assessed the interest for income tax purposes, and the Special Commissioners had confirmed the assessment, having found that the society had not been charged or assessed in any other manner.

The appellants contended that this was not *annual interest*, and that income tax was only chargeable on other than annual interest when it came under the head of trade profit, and that their income was not profit; that the borrowing members, if not otherwise exempt, were chargeable, and not the society, from whom they might deduct the income tax if paid; and they contended alternatively that, assuming the sums paid to be annual interest, they were not chargeable under Schedule D, being charges upon land to be taxed under Schedule A. The Society had refused to allow deduction by the borrowers, on the ground that the interest was not "annual" interest.

The Court of Appeal held (21st and 22nd July 1897) that the sums received were not annual interest, inasmuch as they consisted of monthly instalments made up partly of interest and partly of principal, but that *interest* so received was liable to be assessed under Schedule D, and came within the principle of *The Clerical, &c., case* (p. 184), and that it was immaterial for the present purpose whether the payers were chargeable or ought to have been chargeable under Schedule A.

**Building
Societies.**

**Leds
Building
Society v.
Maitlandine.**

**Society liable
for tax on
interest.**

In the case of wagons taken on a hire-purchase agreement, a question arises as to whether any (and, if so, what) proportion of the instalment can be taken as a charge against profit in respect of interest. The matter is to some extent one of bookkeeping, and opinions differ considerably. In our view, the transaction should, for bookkeeping purposes, be treated by the hirer as a sale, and by the purchaser as a purchase. The amount should be entered at net cash price, and interest charged periodically at such a rate as will cause the last payment to discharge the account. By this means the account of the hirer in the books of the purchaser, and that of the purchaser in those of the hirer, will always show the same balance, and only the interest will be a debit and credit respectively to Profit and Loss Account, both for ordinary and income tax purposes.

**Interest
included in
instalments
under hire-
purchase
agreement.**

The official view is that no portion of the instalments is interest or payment of simple hire, and consequently the whole payment is to be regarded as capital.

Interest
included in
instalments
under hire-
purchase
agreement.

With all respect, we cannot concur in this view, and it seems to be entirely opposed to the Indian Railway cases, where instalments of “annuities” were divided between capital and interest.

As a fact, a company will state two prices—one *for cash*, the other if *on hire*.

If it be argued that it is annual interest, and therefore that tax is deductible, then the “hirer” should be able to deduct tax, and the amount should, *pro tanto*, be excluded from the return of the “owner.”

Also, if so technical a view be taken on the one side, why not on the other side, and an argument be raised that it is *all hire*.

It is understood that the point is being contested by wagon-owning associations.

Annuities to
trustees.

In a case in practice where a testator had left certain persons annuities for managing his estate, the trustees deducted and retained tax on payment of the annuities, contending that they were paid out of profits and fell under sec. 40 of the Act of 1853. The Surveyor contended that they were payments for services rendered, and payable in full and taxable on the recipient. On the case being submitted to the Board of Inland Revenue they expressed their concurrence in the view of the trustees, and discharged assessments which had been made on the recipients.

In a case where a former director of a company was ordered to pay to the liquidator, with interest, the amount of dividends alleged to have been paid to the shareholders out of capital, it was held that income tax was not deductible from the interest under sec. 40, it being in the nature of damages (*In re National Bank of Wales*, Ch.D. 1899).

Interest on
sum awarded
as damages.

In *The Lord Advocate v. Lord Provost, &c., of the City of Edinburgh* (Court of Session, Scotland, 3rd March and 15th October 1903 and 6th July 1905) it was held that the Act of 1888, sec. 24 (p. 305), applies to any interest of money, whether yearly interest or not, which is not payable, or not wholly payable, out of profits or gains brought into charge, and that the corporation is bound to retain and render an account of the income tax on the interest on the temporary loans, so far as the interest is not paid out of profits already charged with tax.

*Lord
Advocate v.
Edinburgh
Corporation.*

Interest on
short loans.

In the case of *Smith v. The Law Guarantee and Trust Society* (Court of Appeal, 9th August 1904) the question was raised whether, when the assets of a company ultimately realised a sum less than the original principal due to debenture-holders, any portion of such sum should be attributed to interest, and be liable to income tax. The Commissioners of Inland Revenue consented to appear and to argue from the point of view that as much as possible ought to be attributed to income. By clause 11 in the trust deed it was provided *inter alia* that the trustees should hold the money to arise from realisation upon trust to pay expenses.

*Smith v.
The Law
Guarantee
and Trust
Society.*

Deficiency on
sale of
security.

**Smith v.
The Law
Guarantee
and Trust
Society.**

and the residue first in payment of arrears of interest, and secondly in payment of principal.

**Deficiency on
sale of
security.**

The Court held (affirming the decision of the Chancery Division) that the provision (clause 11) for payment of interest first was for the benefit of the creditors, and one, therefore, which they could waive, if they so desired. There was no occasion to give them any option to elect, as it was clearly to the interest of every one of them that the payments should be attributed to principal. As suggested by Byrne, J., in the Chancery Division, there might probably be trustee debenture-holders, and part of the amount received by them on account would be distributable as income. The Inland Revenue would, of course, look to them for payment of tax on such amount.

**Davis v.
Marten.**

In *Davis v. Marten* (Chancery Division, 18th December 1903) there was a receiver in possession for debenture-holders, and the rate of interest on the debentures varied. The amount distributable amounted to about 6s. 2d. in the £ on the amount of interest due. The trust deed provided for payment of interest before principal.

Farwell, J., held that, although this provision was inserted for the benefit of the debenture-holders, as their interests differed they could not waive their rights in the absence of agreement of all the debenture-holders. The amount distributed must, therefore, be deemed to be interest, and would be chargeable accordingly.

In *Delage and another v. The Nugget Polish Co., Lim.* (King's Bench Division, 10th April 1905), the question of the right to deduct tax arose under the following circumstances. By an agreement made in 1898 the plaintiffs sold to Messrs. Lane & Fitte the exclusive rights to manufacture "Nugget polishes," the consideration being 8 per cent. on the gross receipts for forty years. The rights were assigned in 1900 to the company. The company had deducted tax, and the plaintiff brought this action for the amount thereof.

Delage v. Nugget Co.

Deduction of tax on payment of fixed percentage of receipts.

It was admitted that the profits of the company exceeded the 8 per cent.

On behalf of the company it was argued that this was not a payment out of profits (1853, sec. 40). The 8 per cent. was payable whether there was any profit or not. The recipients were abroad, and if an annuity was payable out of the United Kingdom it could not be taxed. The payments were not income, and, moreover, they fluctuated from year to year.

Phillimore, J., said the defendants were compelled by the Crown, "and rightly so," to pay tax on their profits without deducting the 8 per cent. The amount was clearly an annuity payable out of profits. He continued :—

"The only point that remains is the question whether it makes any difference that the plaintiffs here are foreigners. I do not think it does; they cannot be directly taxed, but they are receiving a sum of money (not profits) which they only gain because work has been done in this country. It is quite in accordance with the principles of our Legislature that they should receive such money from this country with the deduction of income tax from it. I think, therefore, it makes no difference that they are foreigners."

**Pretoria
Railway case.**

**Interest on
taking over
railway.**

In *Pretoria-Pietersburg Railway Co., Lim. v. Elwood* (Court of Appeal, 24th February 1908) the facts were as follows:—

In 1895 a concession was granted by the South African Republic for a railway. The Government were to have power to stop the railway in time of war, &c., but were only to pay compensation in such a case if they *used* the railway. The capital of the company was to be £500,000, and any sum necessary over and above this was to be raised by debentures guaranteed by the Republic. The Government had the right to appropriate the railway at any time after completion (on giving two years' notice), in which case they were to pay the full amount of the paid-up capital, with $7\frac{1}{2}$ per cent. interest, and to take over the debenture liability. The company was duly incorporated in London under the Companies Acts and registered in the Republic.

In 1899, when war broke out, the Republic seized the railway, which was eventually taken by Lord Roberts.

In 1902 the British Government gave notice to take over the railway from the company under the terms of the concession, which they adopted in its entirety.

The amount paid was as follows :—

Repayment of Share Capital	£500,000						
less an amount previously advanced							
to pay a claim on the company							
£157,044 15 5	...	...	...	£342,955	4	7	
Guaranteed interest thereon from 1st							
January 1899 to 14th November 1903				97,506	16	11	
7½ per cent. premium on Share Capital				37,500	0	0	
1½ per cent. premium on Share Capital							
(for loss on investment to 18th Feb.							
1904) ...	...	...	...	7,500	0	0	
				£485,462	1	6	

*Pretoria
Railway case,
Interest on
taking over
railway.*

This sum was paid in the United Kingdom by two cheques on the Bank of England, drawn by the Crown agents for the Colonies.

The question was as to tax on the sum of £97,506 16s. 11d. The company contended—

- (1) That it was part of a lump (capital) sum and was not either interest or profit ; or
- (2) That if it was either they should be assessed as a trading company, this being the assumed gross profit from 1st January 1901 to 14th November 1903, less expenses in London £21,624 6s. 3d., net £75,882 10s. 8d. One-third £25,294 3s. 7d.

The Crown resisted both contentions. The High Court gave judgment for the Crown, considering the point governed by *Blake v. Imperial Brazilian Railway* and *Nizam's Guaranteed State Railway Co. v. Wyatt*, but on appeal it was held that the £97,506 must be treated as profit for the period, and that tax was to be paid only upon one-third of it.

**Interest paid
in kind.**

Where a person borrows money for business purposes and repays it in account, in goods, the question whether or not he should deduct tax in account depends on whether or not the interest is "annual interest." If the goods are taken in account current and the account interested from day to day, it would seem that the interest should be treated like bank interest. If, however, the loan is a fixed one—or repayable by fixed instalments—the interest would seem to be annual, and tax should be deducted when the interest is taken into account.

**Deduction of
annual
interest.**

There have been several important cases before the Courts on the question of the deduction of interest in arriving at profits for assessment.

***Alexandria
Water Co. v.
Musgrave.***

**Interest
payable to
foreigners not
to be
deducted.**

In *Alexandria Water Company v. Musgrave*, heard in the Court of Appeal, 19th April 1883, the company appealed against a judgment confirming an assessment upon them in respect of the whole of their profits. They contended that they should be entitled to deduct a sum of £7,695, interest payable to debenture bondholders residing in Egypt. Such holders, being foreigners residing out of the United Kingdom, had been paid the full interest without any deduction, and

the company contended that, as they would be unable to get the tax from anyone, they should not have to pay it. Further, that though there is not to be any deduction made “on account of any annual interest . . . payable out of profits” (sec. 100 of the Act of 1842), sec. 159 showed that the rule was to be limited to cases where the company got back the tax from the recipient of the interest, and that their view was also supported by sec. 102.

*Alexandria
Water Co. v.
Musgrave.*

Act of 1842,
sec. 159.

These two sections are as follows:—

“Sec. 159.—In the computation of duty to be made under this Act in any of the cases before mentioned (*i.e.*, where the tax has been deducted at the source) either by the party making or delivering any list or statement required as aforesaid, or by the respective assessors or Commissioners, it shall not be lawful—

“To make any other deductions therefrom than such as are expressly enumerated in this Act;

“Nor to make any deduction on account of any annual interest, annuity, or other annual payment to be paid to any person out of any profits or gains chargeable by this Act, in regard that a proportionate part of the duty so to be charged is allowed to be deducted on making such payments;

“Nor to make any deduction from the profits or gains arising from any property herein described, or from any office or employment of profit, on account of diminution of capital employed, or of loss sustained in any trade, manufacture, adventure, or concern, or in any profession, employment, or vocation.”

“Sec. 102.—Upon all annuities, yearly interest of money, or other annual payments, whether such payments shall be payable within or out of Great Britain (now the United Kingdom), either as a charge on any property of the person paying the same by virtue of any deed or will or otherwise, or as a reservation thereout, or as a personal debt or obligation by

Act of 1842,
sec. 102.

*Alexandria
Water Co. v.
Muggrave.*

*Act of 1842,
sec. 102.*

virtue of any contract, or whether the same shall be received and payable half-yearly, or at any shorter or more distant periods, there shall be charged for every twenty shillings of the annual amount thereof the sum of sevenpence (now 1s. 2d.), without deduction, according to, and under and subject to, the provisions by which the duty in the third case of Schedule D may be charged;

“Provided that in every case where the same shall be payable out of profits or gains brought into charge by virtue of this Act, no assessment shall be made upon the person entitled to such annuity, interest, or other annual payment, but the whole of such profits or gains shall be charged with duty on the person liable to such annual payment, without distinguishing such annual payment; and the person so liable to make such annual payment, whether out of the profits or gains charged with duty, or out of any annual payment liable to deduction, or from which a deduction hath been made, shall be authorised to deduct out of such annual payment at the rate of sevenpence (now 1s. 2d.) for every twenty shillings of the amount thereof; and the person to whom such payment liable to deduction is to be made shall allow such deduction, at the full rate of duty hereby directed to be charged, upon the receipt of the residue of such money, and under the penalty hereinafter contained; and the person charged to the said duties having made such deduction shall be acquitted and discharged of so much money as such deduction shall amount unto, as if the amount thereof had actually been paid unto the person to whom such payment shall have been due and payable.

“But in every case where any annual payment as aforesaid shall, by reason of the same being charged on any property or security in the British plantations, or in any other of (His) Majesty's dominions, or on any foreign property or foreign security, or otherwise, be received or receivable without any such deduction as aforesaid, and in every case where any such payment shall be made from profits or gains not charged by this Act, or where any interest of money shall not be reserved or charged or payable for the period of one year, then and in every such case there shall be charged upon such interest, annuity, or other annual payment as aforesaid, the duty before mentioned, according to and under and subject to the several

and respective provisions by which the duty in the third case of Schedule D may be charged (*i.e.*, on the full amount of such interest, &c., without any deduction):

*Alexandria
Water Co. v.
Musgrave.*

“Provided always, that where any creditor on any rates or assessments not chargeable by this Act as profits shall be entitled to such interest, it shall be lawful to charge the proper officer having the management of the accounts with the duty payable on such interest, and every such officer shall be answerable for doing all acts, matters, and things necessary to a due assessment of the said duties, and payment thereof, as if such rates or assessments were profits chargeable under this Act, and such officer shall be in like manner indemnified for all such acts, as if the said rates and assessments were chargeable.”

Brett. M.R., was doubtful whether the company were not entitled to deduct the tax on payment of interest to the foreign debenture-holders; but in any case, he said, the contention of the company was in direct contravention to the rule according to its true grammatical reading. It thus became necessary to decide whether there was anything in the statute which would compel the Court to read the rule otherwise than according to its grammatical reading. He considered that sec. 102 did not apply, and that sec. 159 could not be read into sec. 100 so as to limit its meaning. There certainly was a hardship, but it was one imposed by the plain words of the statute.

*Interest
payable to
foreigners.*

Cotton and Bowen, L.JJ., concurred, and the appeal was dismissed, and judgment entered for the Crown.

In *The Holborn Viaduct Land Co., Lim. v. The Queen* (Queen's Bench Division, 19th, 20th, and 26th May 1887)

*Holborn
Viaduct Land
Co., Lim. v.
The Queen.*

the facts were as follows: The company had acquired land and built property, having raised for the purpose £157,800

*Tax on
interest, and
under Sch. A.
Petition of
right.*

*Holborn
Viaduct Land
Co., Ltd. v.
The Queen.*

by way of mortgage debentures. The income of the property had not been more than sufficient to pay ground rents, rates and taxes, and debenture interest. For the years 1877 to 1884 inclusive they had paid tax as follows :—

	£	s	d
Under Schedule A, and by way of deduction from ground rents receivable ...	2,979	1	9
Under Schedule D in respect of tax deducted from interest paid ...	1,405	7	2
Together ...	4,384	8	11
On the other hand they had deducted from interest and ground rents payable by them tax amounting to ...	3,796	10	0
A difference of ...	£587	18	11

The assessments under Schedule D had been made in respect of debenture interest, and were based on returns made by them each year. The company sought to recover the said sum of £1,405 7s. 2d., contending that, having been fully assessed under Schedule A, the assessment under Schedule D was a double assessment. The Commissioners, “on the “grounds of fairness, and as a matter of grace but not of “right,” offered to repay the above sum of £587 18s. 11d., but the company contended that by petition of right they were entitled to recover the sum of £1,405 7s. 2d.

On behalf of the company it was argued that the returns under Schedule D had been made by an oversight ; that the company had deducted income tax from the interest under

sec. 40 of the Act of 1853, and there was not anything in the Act which entitled the Crown to claim the difference between what a landlord pays and the amount he deducts; that it was a case of double assessment, and the appeal clauses did not relate to double assessments, but there was a clear direction that in such cases the sum was to be returned (1842, sec. 171; 1880, sec. 60); and that the Act of 1860, sec. 10, providing that—

Holborn Viaduct Land Co., Lim. v. The Queen.

“No claim for repayment of duty under this Act, or any former Act relating to income tax, shall be allowed unless it shall be made within three years next after the end of the year of assessment to which the claim shall relate,”

did not apply to the case of a double assessment, and if the Commissioners did not comply with their statutory duty of vacating the assessment and repaying the money, the proper remedy was by petition of right.

For the Crown it was urged that the above section did apply, that this was not a case of double assessment, and that there was a complete machinery supplied by the Acts for the correction of any over-assessment—by way of appeal—and where that was applicable it entirely excluded a petition of right; that the company obviously ought to pay over to the Crown the income tax they had retained, as they had, as a matter of fact, simply acted as collectors for the Crown.

The Court decided that the 10th section of the Act of 1860 applied, and that the utmost amount which could be claimed

***Holborn
Viaduct Land
Co., Lim. v.
The Queen.***

was the amount for the three past years. This was either a case of double return or of surcharge. If it was a double return the remedy was under sec. 171 of the Act of 1842, or sec. 60 of the Act of 1880. If this view was the correct one the Commissioners had vacated "such part . . . of the assessments as appeared to be an overcharge. . . ." (1880, sec. 60). The company had, however, refused to accept the offer of the Commissioners. Taking the view of this being a double assessment, they had not taken the appropriate remedy, and they could not have a petition of right. Then, again, if it was a case of overcharge, the remedy was by appeal. The company made a return by mistake, and an assessment was made upon them in respect of it. What they ought to have done when they discovered their mistake was to appeal against the assessment on the ground that it had proceeded on an erroneous return. In either case, they had neglected the proper remedy, and, therefore, could not succeed on a petition of right.

***Mersey Loan
and Discount
Co., Lim. v.
Wootton
(Overruled).***

**Interest pay-
able "out of
profits."**

In *The Mersey Loan and Discount Company, Lim. v. Wootton* (*Surveyor of Taxes*) the facts were as follows: The company received money on deposit and allowed interest calculated from day to day on the balances. The Queen's Bench Division held (13th December 1887) that the interest was paid "out of profits," and the company was properly assessed upon it. The income tax upon it should have been deducted from the depositors. This decision was, however, overruled by the House of Lords in the case of *Gresham Life Assurance Society v. Styles* (p. 304).

In the *Commissioners of Supply for Aberdeenshire v. Russell* the facts were as follows: The Commissioners were assessed to income tax Schedule A on the full annual value of the county buildings. The money borrowed for the erection of the buildings was secured by mortgage on the rates, not on the buildings. The rents received from part of the buildings were credited, not to the special rate raised to pay the interest, but to the county general assessment. The Commissioners deducted tax on paying the interest, and maintained that they were entitled to retain it, on the ground that they had been assessed under Schedule A for the full annual value.

Commissioners of Supply for Aberdeenshire v. Russell.

Interest payable by corporation.

They urged that the right to make such deduction and retention under sec. 102 of the Act of 1842 (*ante*, p. 297) and sec. 40 of the Act of 1853 (*ante*, p. 269) was not limited to interest on mortgages of the property assessed, but extended to interest on any personal debt or obligation of the person or corporation whose property is assessed; and, further, that to assess both the interest under Schedule D and the buildings under Schedule A would be a double assessment, as the interest simply represented a portion of the annual value of the buildings. They also urged that the concluding proviso of sec. 102 only applied where the creditor on the rates had no debtor paying income tax deductible from the yearly interest payable to such creditor—*i.e.*, where the interest had not been already paid on in other profits.

The Surveyor contended that as the money borrowed was secured on mortgage over the rate, and the interest on the

Commissioners of Supply for Aberdeenshire v. Russell.

Interest payable by corporation.

same was payable out of the assessment levied for that purpose, and not out of the rents of the property, that such interest was assessable in the terms of sec. 102 ; further, that as the tax under Schedule A was borne by the Commissioners of Supply, and the tax under Schedule D by the creditors on the rates, there was no double assessment.

The Court of Session, Scotland, held (14th June 1890) that the tax deducted by the Commissioners was a tax on the lenders, and that there was not any reason why the Commissioners should retain it or receive an abatement from the assessment under Schedule A.

The Lord President said it seemed to him that sec. 102 was too plain to admit of any double construction. The leading purpose of that section was that all yearly interest not chargeable otherwise under the statute was to be charged in the terms set out in that section, and there was a proviso at the end of the section which specially applied to the case in hand.

See also *post*, Municipal Corporations.

Gresham Life Assurance Society v. Styles.

Annuities were not payable "out of profits," and could be deducted.

In the case of *The Gresham Life Assurance Society v. Styles*, in which judgment was delivered in the House of Lords on the 30th May 1892, the Surveyor of Taxes sought to prevent the company from charging against their profits for income tax purposes the amount of the annuities payable by them. The annuities were granted in consideration of the payment of a lump sum down, which had been brought into the account.

The Surveyor relied upon the fourth rule of the first case of Schedule D :—

Gresham Life Assurance Society v. Styles.

“In estimating the amount of the profits and gains arising as aforesaid no deduction shall be made on account of any annual interest, or any annuity or other annual payment, payable out of such profits or gains.”

The company contended that the annuities were not payable “out of profits,” but that the profits were not ascertained until they had been provided for.

It was held that the annuities were not payable “out of profits,” but that they were “money wholly and exclusively laid out or expended for the purpose of a trade, manufacture, adventure, or concern,” and that they might, therefore, be taken into account. Judgment was accordingly given for the company.

Lord Herschell said this decision was not inconsistent with the decision in *The Alexandria Waterworks Company v. Musgrave* (p. 296), but it was in conflict with that in *The Mersey Loan and Discount Co., Lim. v. Wootton* (p. 302).

Now, by the Customs and Inland Revenue Act, 1888, sec. 24, sub-sec. (3), it is provided that—

Deduction of tax on interest payable.

“Upon payment of any interest of money or annuities charged with income tax under Schedule D, and not payable, or not wholly payable, out of profits or gains brought into charge to such tax, the person by or through whom such interest or annuities shall be paid shall deduct thereout the rate of income tax in force at the time of such payment, and shall forthwith render an account to the Commissioners of Inland Revenue of the amount so deducted, or of the amount deducted out of so much of the interest or annuities as is not paid out of profits or gains brought into charge, as the case may be; and such amount shall be a debt from such person to (His) Majesty and recoverable as such accordingly. . .”

Act of 1888, sec. 24.

The *Gresham* case had been before the Courts previous to the passing of the Act of 1888, and, therefore, the Act (not being retrospective) did not affect the decision.

Application
of Act.

This Act of 1888 is considered not to create a new liability, but simply to provide *machinery*. Consequently, in the case of an English company, where foreign agents had paid annual interest to foreigners, the loan being secured on foreign property, the company having made a loss the Revenue surrendered any right to charge the interest, on the ground that such interest would never have been chargeable prior to 1888.

*Anglo-Continental
Guano Works
v. Bell.*

Interest
payable "out
of profits."

In the case of *The Anglo-Continental Guano Works v. Bell* (*Surveyor of Taxes*), which was heard in the Queen's Bench Division, 1st March 1894, the facts were as follows: The head office of the company is at Hamburg, and there are branches in London and elsewhere. The London house is carried on as a separate business, and it conducts the whole of the business in the United Kingdom. It is advantageous to the company to buy guano for cash instead of on credit, and in order to do this the London house borrows, from the central office and from bankers abroad, large sums of money of fluctuating amounts, and makes repayments whenever funds are available, paying interest in account current on the fluctuating daily balance. It was contended on behalf of the company that this interest was properly deducted by it in ascertaining the taxable profits of the London house, as it really represented a part of the cost incurred in the purchase of the goods; if the goods had been bought on credit instead

of for cash a higher price would have been paid, and that higher price would have been properly entered in the books as the cost price of the goods.

Anglo-Continental Quano Works v. Bell.

The Court gave judgment for the Surveyor. They said that it appeared clear from the Acts that the profits of a business were to be assessed without reference to the consideration as to whether or not the trade was being carried on with borrowed capital. The statement, in rule 3 of the first case of Schedule D, of sums which were not to be deducted, included many charges analogous to the particular one which the company now claimed to deduct. It seemed perfectly clear that such a deduction could not be made. It may be noticed that the interest in this case was payable to a foreign bank, and if allowed as a deduction would have escaped assessment to English income tax, but the decision does not rest on this point, which was not mentioned in either argument or judgment.

In the case of *Scottish North American Trust, Lim.* (Court of Session, Scotland. 16th July, 1910), the question was as to the deduction of interest paid on overdrafts from American bankers. The Trust was formed for the purpose of dealing with American securities, and in the course of their business they borrowed the money on deposit of security and for short periods.

Scottish North American Trust, Lim.

Interest to foreign bank.

The Crown contended that the money was interest on money "employed or intended to be employed as capital" (p. 127), and, as such, could not be deducted.

*Scottish
North
American
Trust, Ltd.*

The Court decided in favour of the company. They said that the dividing line between when the interest on the money was on "capital" and when it was "wholly laid out" for the trade was not easy to define. But that, as Lord Halsbury had said in the *Gresham* case that "profit" was to be "understood in its natural and proper sense—in a sense which no commercial man could misunderstand," so might "capital" be understood. It might well be said that money borrowed permanently enlarged the "capital," but no commercial man would consider his banking facilities were part of his capital. The natural inference to be drawn from the fact that "annual" interest could not be deducted was that *other interest* could be deducted.

*Interest
payable to
foreigners.*

There does not seem to be any doubt that a company cannot claim to deduct interest from their profits for assessment, even though that interest is paid to foreigners permanently residing abroad, and even if the company have not power to deduct tax on payment of the interest (*Alexandria Waterworks* case, p. 296). The person receiving such interest seems, however, to be clearly within the schedule of charge as receiving it "from any property whatever in the United Kingdom" (p. 57), and he might be entitled to repayment of the same or part thereof if his total income did not exceed £700 (see *post*).

Only one case has come under our notice where the company has been allowed to deduct interest, and that is so exceptional that it is unlikely to form a precedent—viz., the company was originally registered abroad, and issued debentures

tures to persons abroad charged on land abroad, and which debentures, of course, did not give any right to deduct income tax on payment of the interest. The company being subsequently registered in the United Kingdom, the Crown acknowledged that it was a hardship to include the interest in the profit, and, after considerable delay, they allowed it to be deducted.

It is a little difficult to reconcile some of these decisions with the practice which prevails. For example, it seems to have been held in *Bebb v. Bunny* (p. 274) that tax could be deducted from the interest because that interest might have gone on for a year or more. Applying the same reasoning to a current account with bankers it might be said that, as such interest might go on for a year or more, tax should be deducted by the banker or customer, as the case might be. It is, however, the universal practice with bankers not to deduct tax before charging or allowing interest. Interest charged by them is brought into their Profit and Loss Account for income tax purposes, and is allowed by the Surveyors as a charge in the customer's account. Interest allowed is, of course, treated in a similar way, viz., is a charge in the bank's books, and a credit on the customer's account for income tax purposes.

Decisions discussed.

Where a loan on mortgage for a fixed amount is made by bankers, tax would be deducted before charging the customer, but where an overdraft on current account is granted on deposit of shares, &c., the interest would be charged in full ; and there is not any provision in the Acts for the recovery of

Loan by bankers on deposit of scrip.

the tax in the case of a person not in business, though the Revenue might obtain it twice, viz., once from the borrower—as he, of course, has it deducted from his dividends (if any) before he receives them—and again partly from the banker in his return of profits.

**Dividend-
earning
shares.**

Where, however, the money is specifically borrowed to take up *dividend-earning* shares, the Board (*ex gratia* but not *ex lege*) repay the tax on a certificate from the bank that they have not allowed deduction, and that the interest is included in their return.

**De Peyer v.
Rex.**

**Interest on
overdraft.**

In *De Peyer v. The King* (Court of Appeal, 1st February 1909) the facts were as follows:—Mr. E. C. De Peyer had for many years invested money in dividend-paying stocks, and for the purpose of such investment had borrowed from his bankers. Interest had been charged by the bankers at fluctuating rates and for varying periods, and Mr. De Peyer, at the end of each year, had had tax upon the bank interest returned by the Board of Inland Revenue.

The advances by the bankers were sometimes for a longer period than twelve months, and in other cases were paid off in a less period.

In November 1905 the plaintiff borrowed from Stuckey's Banking Co., Lim., in order to take up certain debenture stock in a local company. The loan was at bank rate, with a minimum of $4\frac{1}{2}$ per cent. ; the loan might have remained (at the plaintiff's option) for two years. The debentures of the local company were deposited as security.

Within twelve months the plaintiff transferred the loan by borrowing the money from his London bankers, Williams, Deacon & Co., Lim., from whom he already had an existing loan.

De Peyer v. Rex.

Interest on overdraft.

The Board repaid tax on the loan from Williams, Deacon & Co., Lim., but declined to repay tax on the other loan, on the ground that it had not been outstanding for a period of a year or more. On a previous occasion tax had been returned on three separate loans, which had not been outstanding for a period of a year or more. On the 1st February 1907 the Board wrote the plaintiff to the effect that—

"in the case of interest on a fixed sum advanced for a period of a year or more at a fluctuating rate it is doubtful whether the interest is 'annual,' so as to entitle the borrower to deduct tax on payment to the bank (sec. 40), and in view of this doubt if the interest has been paid out of taxed sources and has been taken into account in computing the bank's liability to assessment the Board, as a concession, admit a claim from the borrower if supported by an adequate certificate from the bank. They have extended this concession to cases where interest is paid in full at varying rates on fluctuating advances or overdrafts on current account, although in such cases the interest is clearly not annual. And, strictly speaking, the borrower has no title either to deduct tax on payment or to claim repayment from this department, on the ground that such deduction has been refused by the bankers. But this extension is subject to the proviso that the interest has been paid over one or more years, so as, in fact, to constitute an annual charge on the taxed income of the borrower. It is under this concession that your claims have been admitted for 1906 and past years, but in no case can the Board extend the concession to a case where the advance or overdraft bearing interest has not continued for one year at least."

De Peyer v. Rex.

Interest on overdraft.

On the case being heard before Lawrence, J., with a common jury, in Middlesex, on 13th July 1908, judgment was given for the Crown. The Judge said this was a "short loan," and, under *Goslings and Sharpe v. Blake* (p. 272), was not subject to deduction of income tax. Even if it had been so subject, the plaintiff, having paid without deduction, had lost his right (*Galashiels Provident Building Society v. Newlands*, p. 273). If, as a fact, the Commissioners had given him something to which he was not strictly entitled, that gave him no right to a remedy which clearly he was debarred from now seeking.

The plaintiff appealed, contending further that he was entitled to relief under sec. 171 (double assessment). He also contended that this loan was not for less than a year.

The appeal was dismissed.

Cozens-Hardy, M.R., said he assumed, "without in the least deciding it," that the plaintiff had the right to deduct tax on payment of interest to his bankers, but, as a fact, he paid the interest in full. He also assumed, "without in the least deciding it or expressing any opinion one way or the other," that he might, if so minded, have recovered from the bankers the amount of the income tax which he had failed to deduct. He was unable to see how that could give him any right against the Crown. It had also been said that tax had been paid twice, but that was a fallacy. The bank pay tax on their profits, but it might be they had no assessable profit. It was a fallacy to say they paid tax upon this particular interest.

Taking the same assumption, Moulton, L.J., said the provision (deduction on payment) would be meaningless and useless, if everyone could neglect to avail himself of it and then proceed to sue the Crown. The person to whom the interest was paid might be in such a position that he was not paying income tax to the Crown, and the tax would thus be lost. He was not prepared to decide whether, having overpaid the bank, the plaintiff was entitled to recover *from them*.

De Peyer v. Rex.

Buckley, L.J., said he would assume that the plaintiff was correct in his contention that the decision in *Andrew v. Ferguson* (p. 31) was right, and the *Galashiels* case (p. 273) was wrong. If that was so, it was rather against him than in his favour. Clearly there was not a double assessment.

Also, where the money is used for building purposes (in the case, say, of a speculative builder), and the loan secured by deposit of the deeds, the Board repay tax on the interest if the borrower supports his application by a certificate from the bank showing the interest charged. They would regard it as an equitable mortgage. On the other hand, it might be contended that the interest should have been debited against trading, and not having been so debited, that there is no redress. It would depend on the exact facts.

Loans for building purposes.

The authorities consistently refuse this concession in all cases, except where the loan is from *a bank*, though there seems no reason why they should not extend it to all cases where they have reasonable security that they are getting the tax from the lender, *e.g.*, in cases of insurance companies, &c.

Loans by insurance companies, &c.

**Deduction of
bank interest
from profits.**

In the case of a trader, which arose in practice, where the Surveyor had refused to allow bank interest as a deduction (relying on the *Anglo-Continental* case), a correspondence was opened up with the Board of Inland Revenue, and ultimately the Surveyor was instructed “not to press the point.”

Mines.

In connection with outlay for sinking mining shafts, &c., there have been some important cases before the Courts. In

Addie & Sons.

**Cost of
pit-sinking
disallowed.**

that of *Addie & Sons*, in the Court of Exchequer, Scotland, in the year 1875, the cost of pit-sinking was not allowed, being held to be a charge on capital. In the case of A.

**Knowles &
Sons, Lim.**

**Exhaustion
of capital
allowed, since
overruled.**

Knowles & Sons, Lim., the High Court of Justice, Exchequer Division, gave judgment in 1877 in favour of the company, and allowed them to make a deduction for exhaustion of capital by the working of the minerals, the view taken being that the effect of transferring the assessment of mines from Schedule A to Schedule D was, as the Judge thought, to cause the company to be assessed as carrying on the trade of vendors of coal, having bought wholesale a large quantity, not stored in warehouses but in the earth, and which they were going to sell in the course of their trade, and that they ought to be assessed on the principle of valuing the stock-in-trade—that is, the coal thus stored in the earth—at the beginning of the three years (it being considered that mines, &c., were transferred to Schedule D, it was thought that a three years’ average should be taken instead of a five years’ average), and again valuing the stock at the end of the three years, taking the difference between them into account in estimating the profits for assessment. This judgment, however, has since been overruled in the case of the *Coltness Iron Company*.

The Coltness Company claimed, in the first instance, to have a deduction of £9,027, being the cost incurred in sinking new pits. This claim was afterwards amended, because it was found to be not the cost of sinking new pits, but the amount of an annual instalment written off an account in the books called "Sunk Capital Account," the instalment being estimated as equal to the exhaustion of capital by the working of the minerals. The claim was disallowed by the Commissioners of the district, and their determination was afterwards affirmed by the Court of Exchequer, Scotland, on the 7th January 1881. The case was then taken to the House of Lords, and argued very fully, it being maintained, on behalf of the company, that they were entitled to the deduction claimed, under the Inland Revenue Act, 1878, which gave power to allow for depreciation of machinery and plant; that there could not be any profits until the expenditure was repaid; that in the wages expended there was not anything to represent capital; and that, in fact, the sinking of pits was an expenditure in earning the minerals, and not an investment of capital.

Coltness Iron Co. v. Black.

Pit-sinking disallowed.

The company also explained that when a mineral field is wrought out the pits become useless, and they do not receive any compensation from the landlord or anyone else in respect of them; and that they have not any means of compensating themselves for the cost of the pits other than out of the gross annual returns derived from the minerals worked from them. They contended that, until these outlays were allowed them, the profits of their business were not ascertained.

**Coltness Iron
Co. v. Black.**

**Pit-sinking
disallowed.**

The Surveyor contended that the outlay was an investment of capital, and, as such, was specially disallowed by the Act of 1842. He also referred to several old decisions to the effect that there could not be any deduction allowed for exhaustion of capital by diminution of minerals.

Judgment was given on the 7th April 1881.

Lord Blackburn said the case was stated in order that the House of Lords might be asked to review the decision of the Court of Session in *Addie v. The Solicitor of Inland Revenue*, and reliance was placed on the decision of the Exchequer Division in *Knowles v. McAdam*. Both of these decisions were pronounced at a time when there was not any appeal against either, and, as they were—justly, he thought—considered inconsistent with each other, it was important that both should be brought under review.

Earl Cairns, Lord Penzance, and Lord Blackburn were unanimous in their opinion that the claim of the Coltness Company could not be allowed; that, although the exhaustion of capital would be a proper charge in the Profit and Loss Account, it would not be so for income tax purposes; that the assessment was not on profits but on annual value, and that there was not any distinction between temporary and permanent incomes; and they instanced the case of terminable annuities. They also held that the decision in the case of *A. Knowles & Sons, Lim.*, was wrong, and one which, in their opinion, was not capable of being supported.

**Knowles &
Sons, Lim.,
overruled.**

Lord Blackburn said :

*Knowles &
Sons, Lim.,
overruled.*

“Whether just or not, there can be no doubt that the same annual charge is imposed upon a terminable annuity and on one in perpetuity, and, what seems harder, that the same annual charge is imposed upon a professional income earned by hard labour, often extending over many years before any return is got, and when earned precariously, as depending on the health of the owner.”

The result of the decision in the *Coltness* case is to overrule that of *A. Knowles & Sons, Lim.*, and consequently there is not any allowance for exhaustion of capital.

It was also held by the House of Lords that, although mines had been transferred from Schedule A to Schedule D, the assessment of them was still under the rules in Schedule A so far as the five years' average was concerned.

Earl Cairns said :

“I am not prepared to say that a mine owner might not in some cases be entitled to an allowance in respect of the cost of sinking a pit by means of which pit the materials are gotten which are the source of profit for the year in which the pit was sunk. I desire to reserve my opinion on that point until the question arises.”

Lord Blackburn said :

“I do not wish to lay down any general proposition either that money expended in sinking pits can never be in the nature of expenses incurred within the five years in working the coal so as to be properly taken into account in estimating the profits made in that period, or to say what, if any, the circumstances are under which it may be done. That, I think, had better be left to be determined when the case arises.”

**Allianza Co.
v. Bell.**

**Nitrate
company.**

In *Alianza Company, Lim. v. Bell (Surveyor of Taxes)* (House of Lords, 27th and 28th November 1905), the company, who are owners of nitrate grounds in Chile, claimed a deduction from their profits in respect of the consumption of caliche (the raw material from which nitrate is produced). The caliche is found in deposits about six feet in depth over the grounds, and when the same has been worked out and exhausted the land is of little value. They contended that the caliche should be regarded as stock, and that the fact of that stock being purchased at one operation should make no difference in principle. The Surveyor contended that this was in effect a claim for exhaustion of capital, and the Court upheld this view, and gave judgment for the Crown.

**Principle
discussed.**

At the time the decision in the *Coltress* case was given, it was considered to work a hardship, and at first sight this would appear to be so, but on consideration it will be seen that there is not any greater hardship than in the case of those who have purchased life annuities (the tax being deducted from the whole of the annuity, although a portion of it is a return of capital). The view is that when an amount of capital has been invested and formed into an annuity in any shape the whole of the income becomes liable to tax, whether the investment is the purchase of a life annuity or the sinking of capital with the view of getting coal. Another view as regards the ownership of coal may be illustrated thus. Suppose an owner of coal, instead of leasing it, agrees that he will expend the necessary amount in sinking, and that he will then lease the coal under an agreement for a royalty on the coal and a rent equal to the amount expended and interest

thereon during the term of the lease. It seems clear that in such a case the whole of the rent payable by the lessee would be subject to the tax, and the lessor would pay by way of deduction, or he would be assessed separately for the rent and pay by way of deduction on the royalty. In any case, if such a concession were to be made as that asked for in the cases of *Addie & Sons*, *Knowles & Sons*, and the *Coltness Co.*, then a distinction would have to be made between the amount of capital and the amount of income included in an annuity created by purchase. Mr. Gladstone, in his Budget speech in 1853, set up the case of annuities as a great difficulty in the way of dealing with any property of a similar character.

It was held, in *Edinburgh Southern Cemetery Company v. The Commissioners of Inland Revenue* (Court of Session, Scotland, 13th November 1889), that the proceeds of sales of pieces of ground, for burial purposes, were assessable to income tax under Schedule A, No. III., as income derived from a trade carried on by the use of land; and there was not any deduction allowed in respect of part of such proceeds being a realisation or conversion of capital. The Court considered that the case was governed by that of the *Coltness Iron Company*.

Edinburgh Cemetery Co. v. Commissioners of Inland Revenue.

Part proceeds of sales of land disallowed.

We have always held the view that as a matter of *justice* annuities should only be taxed on the portion which can be fairly called income after allowing a provision to replace the capital, but it has seemed to us difficult to deal with this *administratively*. The opinion of the Chairman of the Committee which sat in 1904 (Mr. Ritchie), of Sir Henry

Tax on annuity.

Principle discussed.

Primrose, and of Mr. Buxton seemed to be that it is fair to tax the whole annuity, though the Chairman considered there was justice in a claim for wasting of capital.

They apparently support this by suggesting :—

Tax on annuity.

Principle discussed.

(a) That a person buying an annuity does so in order to convert it into income.

(b) That a person so doing escapes estate duty, as he leaves nothing.

(c) That transactions having been entered into on the present basis a change would be an absolute *gift* to annuitants at the expense of other taxpayers.

Sir Henry Primrose made a strong point to his case when he brought out that as to leasehold interests the interest is a continuing one, though passing from A. to B., and that that transfer should not affect the State.

Iron ore mine.

Allowance for driving levels.

Mr. E. E. Price, in his paper reported in *The Accountant*, 18th January 1890, states that he has had an allowance by Local Commissioners, from the profits of an iron ore mine, for the expense of driving underground levels to win ore, where the expense was charged against the profits of the year in which it was incurred, and where a considerable part, if not the whole of the ore was realised in the same year. He also cites another case of a quarry, where continual expense was incurred for laying bare the mineral, and this outlay was made in advance of raising and realising the mineral, and then charged off by a tonnage rate on the mineral as it was raised. The work of raising and realising the ore followed pretty

closely on the outlay for laying it bare, but a considerable sum was sometimes carried forward in the Balance Sheet representing the outlay on baring not yet written off against profits. In this case, after appeal to the Special Commissioners, an arrangement was made to allow a deduction from the profits of each year of the *actual* expenditure on baring taking place in that year, instead of the tonnage rate.

The case of *Morant (Surveyor of Taxes) v. The Wheal Grenville Mining Company* (Queen's Bench Division, 22nd November 1894) raised a question as to the assessment of a "Cost Book" mine. Such a mine is, in effect, a common law partnership, the shareholders participating in profits and losses, and each shareholder being liable for the whole debts of the concern. There is not any Capital Account kept. If the expenditure exceeds the receipts, so that there is a loss on the working, a call is made to meet it. On the other hand, if the current receipts exceed the expenditure so that there is a profit, it is distributed in dividend. It had been resolved to erect an additional engine, and to sink a new shaft. A call of £2 10s. per share was made to meet the estimated cost, £15,000. The old shaft was worked as before. It was sought by the company to charge against their profit for income tax purposes so much of the call as had been expended, on the ground that the outlay was a necessary expense incurred in working the mine. The Surveyor contended that it was mainly an outlay of capital, and therefore could not be deducted. The Commissioners had allowed the deduction, being of opinion that in Cost Book mines there

Morant v. Wheal Grenville Mining Co.

Cost book mine.

Principle of assessment.

*Morant v.
Wheat
Grenville
Mining Co.*

was not any such thing as capital, and that there could not be any profit on the working until every expense had been met. The Surveyor appealed.

The Court gave judgment for the Crown. They said that the fact of the mine being on the Cost Book plan did not make any difference. Under the Act the assessment was to be on an average of five years' profits, and there could not be any deduction for capital expenditure incurred in former years. This had been held in the *Coltness* case, and in *Addie's* case the same rule had been applied to expenditure in the current year. The question was whether this was an expenditure of capital or working expenditure. The question was one of fact, and it was asserted that the expenditure was necessary for, and conduced to, the earning of the profits during the period of assessment. That being asserted, the case might go back to be re-stated on that point, and as to whether the sinking of a shaft in this mine was working expenditure or expenditure of capital.

The Surveyor's appeal was therefore allowed, with leave to get the case re-stated on the matter of fact suggested, but the case never came back to the Court.

Dead rents.

An interesting question arises as to preparing returns for colliery proprietors who have to pay a dead rent merging in a royalty, and who have not raised sufficient mineral to work off the dead rent. As before mentioned (p. 319), income tax would be deducted by the colliery proprietors on paying the dead rent, and they would account for it to the Crown by not deducting the dead rent in returning their profits for assess-

ment—or, in case they did not make a profit equal to the **Dead rents.** dead rent, they would be assessed upon the amount of the dead rent (see also p. 169). In the course of a few years they begin to work off the overpaid royalties, and though they charge, say, £2,000 against the profit for royalty, they have only to pay the dead rent, say £1,000.

One might be inclined to make up the return as follows :—

Gross profit for the year 1880 after deducting				dead rent of ...	
				£1,000	£10,000
"	"	1881	" "	1,000	10,000
"	"	1882	" "	1,000	10,000
"	"	1883	" "	1,000	10,000
"	"	1884	" royalty	2,000	9,000
					1/5th) 49,000
					£9,800
<i>Add</i> dead rent paid to landlord for 1884					1,000
					£10,800

The return, however, is required to be :—

Gross profit for year 1880 without deduction of royalty or				dead rent ...	
					£11,000
"	"	1881	" "	"	11,000
"	"	1882	" "	"	11,000
"	"	1883	" "	"	11,000
"	"	1884	" "	"	11,000
					1/5th) 55,000
					£11,000

*Broughton
and Plas
Power Co. v.
Kirkpatrick.*

The rule governing such cases has been laid down by the Queen's Bench Division in *Broughton and Plas Power Company v. Kirkpatrick* (17th December 1884). The facts of this case were as follows :—The company had a lease for 42 years from the 25th March 1874. The dead rent was fixed at £1,000 a year for the first three years, £2,000 for the next seven years, and £3,000 a year for the residue of the term, merging in a royalty of 6d. per ton. They were to be allowed to recover the overpaid royalty in the first sixteen years. The mines were first worked in October 1880. From October 1880 to March 1881 the royalty exceeded the dead rent by £1,477. In each year up to 1880 the company had paid the lessor the dead rent, less tax, and the tax had been paid over to the Revenue in due course. For the year 1881-2 the Commissioners made an assessment upon them for £5,843, the figure being arrived at as follows :—

Balance of profit per Profit and Loss Account	£2,556
Add Royalties	3,477
Gatewen Royalty	1,000
Rent	90
Way leave	371
Income Tax	50
	£7,544
Less Depreciation	£1,400
Bank Interest	301
	1,701
	<u>£5,843</u>

The company claimed that the whole sum of £3,477 should not be added, but only £2,000, their contention being that tax had already been paid on the £1,477 in past payments of dead rent. It was held that though the £1,477 had already borne tax, it had been paid not by the company, but by the lessor, and that the company must now pay upon it as a part of the profit of their undertaking.

**Broughton
and Plas
Power Co., v.
Kirkpatrick.**

Though tax was paid upon some portion of the dead rent it really only illustrates the same effect as is produced in any concern, viz., that after a period (usually three years) past losses cannot be set off against present profits.

The following is another case in practice, mentioned in *The Accountant*, 21st February 1891.

A company owned houses, the rents of which constituted its sole income. The assessment under Schedule A exceeded the gross rents. Some of the leases which fell in were renewed at a premium, and the premium was distributed among the shareholders by way of bonus. The question was raised, incidentally, whether such premiums were liable to tax, but the Inland Revenue did not make any claim. It seems only natural that, as the person paying the premium is not allowed to deduct any part of it from his profits before returning them for assessment, so the person receiving it should not be required to pay tax upon it. It must be considered as a payment and receipt on Capital Account so far as the respective persons are concerned.

**Property
company.**

**Premiums on
renewal of
leases.**

**Deduction
of expenses.**

Mr. E. E. Price, in *The Accountant*, 7th March 1891, gives an illustration of the method to be adopted in order to arrive at the amount to return for assessment in the case of a company in receipt of an income from rents, and also making a profit from sales of property. It is as follows :—

Income from rents (taxed under Schedule A) ...	£5,000
<i>Deduct</i> ground rents, insurance, and repairs ...	600
Net income from rents ...	£4,400
Income from other sources ...	1,000
	<u>£5,400</u>

Assume the general expenses, exclusive of above expenses, agent's commission, &c., to be £400. This should be divided proportionately between the two classes of income. The proportion chargeable against the untaxed income would be—

$\frac{1000}{1400}$ of £400, or £74 1s. 6d.

and the income to return for assessment would be—

Profit as above ...	£1,000
<i>Less</i> Expenses ...	74
	<u>£926</u>

This system, Mr. Price states, was adopted on the advice of one of the City Surveyors, and it seems equitable, for though, as will be seen, it does not allow any expenses to be charged in respect of collection of rents, &c., the company is only put on the same footing as a private individual would be,

if the property were so owned—and, moreover, there is now an allowance of one-sixth for repairs, &c.

As to directors' fees in case of a property company, &c., see *ante* p. 116.

**Liability
of directors'
fees.**

In the case of a trade carried on by two or more persons jointly, the assessment is to be made upon them jointly (if either of them claims exemption, &c., they can be treated separately though the assessment is in one amount, see Chapter VIII.), and distinct from any other duty chargeable on them or any of them. and the return is to be made by the precedent acting partner, or, in case none of the partners reside in the United Kingdom, by their agent in the United Kingdom (1842, sec. 100, Schedule D, third rule, applying to Cases I. and II.).

**In case of
partnership,
assessment to
be on firm.**

In the event of a change taking place in the partnership, either by death or dissolution, or by admission of a new partner, or in the event of any person succeeding to a trade, profession, &c., the profit is, notwithstanding such change, to be ascertained as if the change had not taken place, unless it is proved to the satisfaction of the Commissioners that the profits have fallen short, or will fall short, from some specific cause. since the change took place, or by reason of it (1842, sec. 100, Schedule D, fourth rule, applying to Cases I. and II.). This rule is as follows:—

**Change in
partnership or
“succession.”**

“If amongst any persons engaged in any trade, manufacture, adventure, or concern, or in any profession, in partnership together, any change shall take place in any such partnership, either by death or dissolution of partnership, as to all or any of the partners, or by admitting any other

**Change in
partnership or
“succession.”**

partner therein before the time of making the assessment, or within the period for which the assessment ought to be made under this Act, or if any person shall have succeeded to any trade, manufacture, adventure, or concern, or any profession within such respective periods as aforesaid, the duty payable in respect of such partnership, or any of such partners, or any person succeeding to such profession, trade, manufacture, adventure, or concern, shall be computed and ascertained according to the profits and gains of such business derived during the respective periods herein mentioned, notwithstanding such change therein or succession to such business as aforesaid, unless such partners or such person succeeding to such business as aforesaid shall prove, to the satisfaction of the respective Commissioners, that the profits and gains of such business have fallen short or will fall short from some specific cause to be alleged to them, since such change or succession took place, or by reason thereof.”

**Ryhope Co. v.
Foyer.**

**Purchase by
company is a
“succession.”**

In the case of *Ryhope Coal Company, Lim. v. Foyer* (Queen’s Bench Division, 19th March 1881) it was held that the incorporation of a partnership creates a “succession” within the meaning of the above rule; also, that a diminution of profits caused by extraordinary depression of trade is a falling short of the profits from a “specific cause” within the exception. The facts of the case and the judgment are as follows :—

A partnership, after working certain coal mines for more than five years, was, on the 21st December 1875, incorporated as a limited company, and sold to the company the assets, subject to the liabilities, of a partnership. The partners became holders of all the shares in the limited company according to their interests. After the 3rd of August 1876 changes took place in the shareholders. The company, being assessed by the Income Tax Commissioners to income tax

under Schedule D, for the year ending 5th of April 1877, on an average of the five preceding years, appealed, and contended that they were only liable to pay on a computation for one year on the average of the profits from the 21st of December 1875, the date of the incorporation. The Commissioners stated a case, in which they found that

Ryhope Co. v. Foyer.

Purchase by company is a “succession.”

“the profits and gains of the appellants’ business had fallen short since the 21st December 1875, from the following specific cause, viz., the extraordinary depression in the iron and coal trades, whereby the appellants were unable to sell either so large a quantity of their coals as they had formerly been enabled to do, or to obtain anything like so good a price for such coals.”

Figures showing that the annual profits had fallen short by one-half were set out.

It was held that Schedule A, No. IV., Rule 6—which prescribes that if it shall appear that the account required by the rules

“cannot be made out by reason of the possession or interest of the party to be charged thereon having commenced within the time for which the account is directed to be made out, the profits for one year shall be estimated in proportion to the profits received within the time elapsed since the commencement of such possession or interest,”

did not apply.

That the business was a “trade . . . adventure or concern,” within Schedule D, Rule 1, of the rules for ascertaining the duties to be charged in respect thereof, and was not within the terms of the proviso “set up and commenced” within the period of three years;

Depression of trade is a “specific cause” of falling off.

That the company was a new association carrying on an old concern, and had “succeeded” to it within the fourth Rule of Schedule D, applying to the first and second cases; but that, since such succession, the profits had fallen short from a “specific cause” within the exception in that clause; and that the rule of the sixth case (*i.e.*, in respect of profits not falling under any other case) in Schedule D applied, and under it the computation should be made “on the amount of the full value of the profits and gains received annually”—*i.e.*, for the current year.

Highland Railway v. Special Commissioners.

Portion of undertaking discontinued. Profit or loss of that portion still to be taken into average.

In this connection the case of *Highland Railway Company v. Special Commissioners of Income Tax*, heard before the Court of Session, Scotland, 10th and 12th November 1885, is of interest. The headnote to the report of the case is as follows:—

“Income tax.—Basis of assessment.—Discontinuance of portion of an undertaking.—A railway company discontinues certain steamships which it had been running at a loss. In the following year the assessment on the company must be based on the net profits of the whole undertaking in the year preceding the year of assessment.”

The company made a return of £158,644 for the year 1883-4, based on the profit of the year preceding the year of assessment (*viz.*, to 28th February 1883). The loss on working, and depreciation, of certain steamers in the half-year to August 1882, *viz.*, £1,167 and £440, were deducted in arriving at this sum. The steamers were discontinued during the year ended 28th February 1883, and the company entered into a traffic agreement with a steamship owner. The Special

Commissioners disallowed these deductions, but stated a case for the opinion of the Court. The Court inclined to the opinion that, having entered into such agreement, the company had not abandoned the steamer traffic, but they decided that the assessment should be on the profits of the preceding year, whether any part of the business of that year had been discontinued in the subsequent year or not.

Highland Railway v. Special Commissioners.

Portion of undertaking discontinued. Profit or loss of that portion still to be taken into average.

Lord Shand thought the decision turned on whether the company had really abandoned the steamer traffic, or were carrying it on in another form.

Putting this aside, however, the Lord President proceeded to discuss the question on the supposition that that portion of the business *had* been discontinued, and he came to the conclusion that it was still the same *undertaking*, and, as such, was to be assessed as if no change had taken place. He said :

“If a portion of the company’s business becomes unprofitable, and is dropped, either permanently or for a time, the effect of that is not to make the undertaking of the company something different from what it was . . . the undertaking of the company remains exactly what it was.”

He said this was not the same as the case of a business trading company voluntarily giving up a portion of their business, and resolving for the future to continue only in one line of trade.

“That, no doubt, would change the nature of the undertaking. But we have nothing of the kind here. The company exists for the purpose of exercising, as far as they think fit, all the powers conferred by their special Acts.”

**Highland
Railway v.
Special Com-
missioners.**

**Portion of
undertaking
discontinued.
Profit or loss
of that
portion still
to be taken
into average.**

He concluded :

"I think, therefore, that the preceding year to the year of assessment having been taken as that upon the profit of which the assessment is to be made, the Commissioners were bound to take the profits of that year just as they actually stood in point of fact, whether any part of the business of that year had been discontinued in the subsequent year or not."

We find a great difficulty in seeing the distinction to which the Lord President alludes. To our mind, the two cases seem to be on exactly the same lines. The only way in which one can see the distinction is by looking at it as one of *degree*. What relation does the part of the business discontinued bear to the whole business? Is it trivial in comparison, or is it such as to change the nature of the business? But the most important point to observe is that the Court were of opinion that the company had *not* discontinued any portion of its undertaking, and, that being the case, it will remain to be decided what the decision will be if other facts are found in some future case.

**Ferguson v.
Aikin.**

**Question as to
"succession."**

On 14th December 1898 Messrs. Ferguson & Co., Lim., appealed to the Court of Session under the following circumstances :—The company was formed in May 1896 to take over and develop the business of Ferguson & Co., who had, in March 1896, taken a lease of a distillery, but had not commenced to work it. The distillery had been standing idle for some years. The Surveyor based the assessment for 1897-8 upon the results shown by the accounts for the period from 16th May 1896 to 30th June 1897, and the Commissioners upheld the assessment. The company contended that they were "successors" of the old firm, and that the assessment

should have been made on the average profits for the three preceding years.

Ferguson v. Aikin.

Question as to “succession.”

The Court held (*Ferguson v. Aikin*) that the case stated was one of fact as to the identity of the limited company and the old firm; and that the facts set forth would not justify them in coming to the conclusion that the Commissioners had arrived at a wrong legal result.

They therefore gave judgment for the Crown.

It has been held by the Court of Session, Scotland (*Watson Bros. v. Lothian*, 13th May 1902), that the purchaser of a tramp ship (S.S. “*Craigerne*”) does not acquire a *business or concern*, but acquires *machinery or plant to carry on* a business or concern, and that consequently on the transfer of the ship there is not a “succession.” The profits were therefore to be assessed on the assumption that the business carried on was a *new concern*, and the assessment was to be made on the average profit earned since 1899, when the purchaser acquired it. In this case there were not any book debts transferred, nor was there any introduction to customers.

Watson v. Lothian.

Purchaser of S.S. does not succeed to a business.

Another case is that of *Bell v. The National Provincial Bank of England, Lim.* (Court of Appeal, 10th December 1903). In 1899 the National Provincial Bank (having 199 branches) acquired, as from 31st December 1898, the business of the County of Stafford Bank, Lim., which carried on business at Wolverhampton only. For 1899-1900, &c., the Crown sought to assess the National Provincial Bank on a

Bell v. National Provincial Bank of England, Lim.

Business acquired.

Bell v. National Provincial Bank of England, Ltd.

figure arrived at by adding together the average past profits of the National Provincial Bank and of the County of Stafford Bank. The National Provincial Bank claimed to be assessed on the basis of their own average past profits without any such addition.

In view of Commissioners and Queen's Bench not a succession,

The Commissioners adopted the view of the company that this was not a “succession” by the National Provincial Bank to the business of the Stafford Bank within the meaning of the rule (p. 327). The Queen's Bench Division took the same view. They said that a man succeeds to an estate which devolves upon him, although he was previously the owner of other and larger estates, but the rule was not meant to apply to such a case—it was only meant to refer to cases where the *concern* was the same, but there had been a *change of the partners carrying it on, &c.* They thought it was impossible to say (assuming the business of the Stafford Bank still survived) that in the hands of the National Provincial Bank it was the same as before the change. In a former case (*Ferguson v. Aikin*) it had been said, “. . . There may “be cases where a new concern carrying on a large business “absorbs a small concern, and cannot in any legitimate sense “be regarded as their successors,” and Ridley, J., thought this was a case in point.

but overruled by Court of Appeal.

The Crown appealed, and the appeal was allowed. The Master of the Rolls (Collins, L.J.) pointed out that if a new company had been formed to take over the County of Stafford Bank the case would have come directly within the rule

(p. 327), and the company would clearly have “succeeded” to the business. What difference could it make that the company was already in existence and carrying on business? The company none the less succeeded to the business because they already had another business. This was not the case of a person buying an existing business for the purpose of annihilating it, because he desired to get rid of the competition and carry on his own business more successfully. There was nothing of that kind here; the former business was now carried on pretty much as before, except that the profits were merged. It was not like the case of an old bank opening a new branch; this was the acquisition of an existing business.

*Bell v.
National
Provincial
Bank of
England, Lim.*

Just about the time that decision was given another case in practice was brought to our notice. It is, indeed, the reverse of the *National Bank* case. A. carried on a business at X, with branches at Y and Z. The accounts of the head office and the branches were all kept quite distinct. By agreement it was provided that each of the branch managers was, on the death of A., to have the option of purchasing the branch on certain specified terms. They duly exercised the option (say) 31st March 1902, and the question of the assessment for 1902-3 arose. The assessment had previously been made upon A. in one sum. The Surveyor contended that the assessment should be upon the average profits of the whole concern made in 1900, 1901, and 1902. The representatives of A. contended that, as only the one business was now being carried on by them, the assessment should be on the average profits made in that one business during the three past years. The

*Assessment of
profit where
branch sold,
&c.*

Assessment of
profit where
branch sold,
&c.

Commissioners decided in favour of the Surveyor, and the representatives of A. appealed. Everything went on in preparation for the hearing, but at the last moment the authorities intimated that they had come to the conclusion that the view of the representatives of A. was the correct one, and the assessment would be amended accordingly.

Of course, the branch businesses would be assessed separately on those who acquired them.

*Stockham v.
Wallasey
U.D.C.*

Person cannot
succeed to
part of an
undertaking.

In *Stockham v. Wallasey Urban District Council* (King's Bench Division, 10th and 18th December 1906) the facts were as follows :—

The Wallasey Tramways Company was incorporated by special Act in 1878. The total length of the tramway was to be about six miles. It was a single line horse tramway, and was only authorised to carry passengers and small parcels. Only four miles were constructed.

In 1885 the Seacombe and New Brighton Omnibus Company, Lim., was incorporated.

In 1888 the two concerns were bought up by the Wallasey United Tramways and Omnibus Company, Lim. The actual transfer was completed in 1891.

By the Wallasey Tramways Act 1886 certain of the tramways authorised were abandoned.

By the Wallasey Tramways and Improvements Act 1899 the Wallasey Urban District Council acquired powers to construct about eight miles of tramways, &c.

After litigation it was decided by the House of Lords that the Tramways Act 1870, and the above Act of 1878, gave the Council power to purchase the first-named tramway in 1900. This was accordingly done in 1901, and the price was £20,500.

*Stockham v.
Wallasey
U.D.C.*

**Person cannot
succeed to
part of an
undertaking.**

The company then sold the remainder of its assets—viz., stables, horses, omnibuses, &c.—to a new company called the Seacombe and New Brighton Omnibus Company, Lim.

The Council, immediately on the completion of its purchase, converted the horse tramway into an electric tramway and constructed about six miles more. During the period of construction (31st March 1901 to 17th March, 1902) the Council ran horse tramways so far as possible. On the 17th March 1902 the Council had completed its new system of ten miles, and commenced to run twenty cars thereon (as against nine cars when it was a horse tramway).

Up to and including 1900-01 the old company had always paid on its profits an average as one business, and the directors' report and the accounts, &c., treated it as one business.

The profits of the tramway portion of the old company were agreed at £3,268 for the year ended 31st March 1900 and £4,902 for the following year. The Council made an actual profit of £2,162 from 31st March 1901 to 17th March 1902, of £479 from 17th March 1902 to 31st March 1902, and for the year ended 31st March 1903 £12,492. The agreed amount of wear and tear was £6,040. The interest payable for the year ended 31st March 1903 was £3,772.

*Stockham v.
Wallasey
U.D.C.*

Person cannot
succeed to
part of an
undertaking.

For the year 1902-3 the Council made up their return as follows:—

Profit 1899-00	...	...	...	£3,268
1900-01	...	...	...	4,902
1901-02	...	...	...	2,641
				3)10,811
				3,604
Depreciation	...			6,040
Loss	...			<u>£2,436</u>

or alternatively they showed a loss of £3,399 on the basis of the first year's working, 1901-02. They claimed (*a*) that their tramway from March 1901 to March 1903 was one and the same business, irrespective of the fact that it had been run partly by horse and partly by electric traction; (*b*) that it was the same tramway as that carried on by the old company; (*c*) that they were successors to the old company.

The Surveyor contended (*a*) that the business carried on during the year 1902-3 was a new business commenced 17th March 1902; (*b*) that it was therefore to be assessed on the profit actually made (£12,492, less depreciation); (*c*) that it was not the same tramway either as that carried on by the old company or as that carried on by the Council previously; (*d*) that it was not a succession; (*e*) that the tramway was not sufficiently identical with the old tramway; (*f*) that any other estimate than that which he contended for would not be a "fair and just" estimate.

The Commissioners decided in favour of the company, and the Crown appealed.

Stockham v. Wallasey U.D.C.

Person cannot succeed to part of an undertaking.

The Court (Bray, J.) said the Crown had argued that this had been both a tramway and an omnibus company, and that a person could not succeed to part of an undertaking; to that he agreed, but he thought that if a person were carrying on two separate businesses a purchaser could succeed to one of them. It thus became a question of fact whether there were two businesses. In view of the fact that the tramway was a separate undertaking created by Act of Parliament (and that the profits were distinguishable) he thought the Council might become “successors.” Then, as to the question whether this was the same business or a new one, he thought a fair examination of the Act showed that the undertaking of the Council was the same business, though much larger. Of the £84,000 spent, only £20,000 was the cost of the original undertaking, but that did not cause him to alter his views.

In *Merchiston S.S. Co., Lim. v. Turner* (King’s Bench Division, 4th March 1910) the facts were as follows. The company was formed in 1901 as a single-ship company to acquire the S.S. “Merchiston.” On 1st April 1906 the ship was lost at sea. Out of the proceeds of the insurance moneys the S.S. “Veraston” was built, and she commenced her first voyage on the 17th October 1906.

Merchiston S.S. Co., Lim. v. Turner.

New ship for old one.

For 1906-7 the company were not assessed in respect of the “Merchiston.” They were assessed in respect of the “Veraston” as follows :—

*Merchiston
S.S. Co.,
Lim. v.
Turner.*

New ship for
old one.

Profit of first voyage, 17th October 1906 to 7th May					
1907 (203 days)	...	...	...	...	<u>£916</u>
Proportion to 5th April 1907	...	...	...	...	<u>£771</u>
(Less depreciation.)					

For 1907-8 the assessment was based upon the above figure of £916 (subject to certain adjustments) at £2,045 for the year (as a new business).

The company contended for an assessment upon the average profits of the past three years ; and that the other mode would only be correct in the case of a steamer divided into 64 shares.

The Surveyor contended that the company was formed for carrying on “ adventures ” one at a time ; that the adventure carried on in respect of the “ Merchiston ” ceased on her loss ; that no adventure was carried on from the 1st April to the 16th October, and that a new one commenced on the 17th October with the “ Veraston ” ; and finally that, in any case, as no business was carried on for six months, the assessment should be on $\frac{2}{5}$ ths ($\frac{12}{30}$ ths) of the total profit and not on $\frac{1}{3}$ d only.

It was held that this was one business and was assessable on past results.

Distinct
businesses—
one
discontinued.

A correspondent writing to *The Accountant*, 3rd June 1893, mentioned a case which had arisen under the following circumstances. A trader carried on the “ A ” business, making profits, and the “ B ” business, making losses. The latter business was discontinued in June 1892, but in the return

for the year 1893-4 he claimed to bring the losses into the three years' average. The Surveyor objected, on the ground that as the business was not being carried on there could not be any profit or loss for the year. The contention of the Surveyor seems reasonable. The trader is to estimate his profit for the year on an average of previous years, and it is not natural to bring into that average past results relating to a business which cannot possibly affect the year's profit or loss. Moreover, the section (101) refers to a person "carrying on" two or more trades, and thus seems to contemplate only the case where the two businesses are being carried on during the year for which the return is being made.

**Distinct
businesses—
one
discontinued.**

The *Highland Railway* (p. 330) case can scarcely be considered an authority on this question, as in that case there was only one business.

The question has been raised whether, where a licence has been extended from six to seven days, it is the *same* business. On principle we think such a change should be regarded only as an extension of an existing business, and the concern should be assessed on the basis of past profits, just as is the case where the proprietors of a business open a new department.

Where a person who has been an employee becomes a partner, the amount of the salary paid to him should, in our opinion, be added to the profits of the respective years during which it was paid—before the average is taken. Thus, in the case given on page 153 *et seq.*, if the "Wages and trade

**Employee
made partner.
His salary to
be added to
profits for
income tax
purposes?**

**Employee
made partner.**

**His salary to
be added to
profits for
income tax
purposes?**

expenses" include salary paid X. at £300, £350, and £400 for the respective years, and X. is admitted a partner as from December 1910, the profits of the firm for the years of average must be taken as £2,600, £3,260, and £3,640, giving a total of £9,500, and an average of £3,166 13s. 4d.

Many Surveyors, however, do not so adjust the old figures, but leave the profit as ascertained—an advantage to the taxpayer, but, apparently, wrong in principle, though approved by the authorities—see also *post*.

**Effect of
principle of
average in
case of
"succession."**

Now, this rule of averaging in the case of a succession is, by some, considered a hardship, but let us see what are the reasons for it, and how it really operates. In the first place, at the commencement of the year we want to estimate the profit for the current year. What better estimate can be made than one based on the profits in past years? The Inland Revenue evidently consider it inadvisable to wait till the end of the year, otherwise, no doubt, all trades, &c., might be assessed on the year's profits. It is true that in the case of a person commencing a business the authorities will frequently allow him to wait until the end of the year and assess him on his actual profits, but this is because there is absolutely not any basis on which to compute what his profits are likely to be. In the case of a sale or succession, however, an estimate can be made from the profits of the person originally carrying on the business, and it does not seem a very violent supposition to think that the new business will make as much, on the average, as the old one did. The case of a profession, such as accountancy, is, of course, rather different from that of a

trade; but then we have the exception as to a falling short from a "specific cause" to fall back upon, and seeing the liberal construction placed upon it in the *Ryhope* case, are we not justified in looking for an equally fair construction in the case of a profession? Surely, if it were shown, for example, that certain audits, &c., would not be given to the purchaser of an accountancy practice, that would be a falling short from a "specific cause," and would be ground for not taking an average of past years.

Effect of principle of average in case of "succession."

In the case of a firm dissolving partnership and the partners going into business separately, there is not any "succession"; but each of the new concerns will be assessed as a new business.

Where A. and B. are in partnership as A., B. & Co., and A. buys the goodwill, and B. starts a new business of the same nature, not being prohibited by the agreement of sale, it would appear to be a "succession" by A. to the business, and he would be assessed on the average of the entire profits made in the past, subject to his right to claim a reduction of the assessment on the ground of a falling off from a "specific cause" (*ante*).

Dissolution of partnership no "succession."

In the case of an *amalgamation* of four concerns, A., B., C., and D., if the past profits are ascertainable, the profits would be assessed—

Amalgamation of firms or companies.

For the first year of the new company,

On the average three years' past profits of the old concerns.

If accounts obtainable, return to be on past profits.

For the second year,

On the average of two years' past profits of the old concerns, and of the one year's profit of the new concern.

and so on.

If accounts not obtainable, return to be on profit of amalgamated concern.

If, however, the past profits or any of them were for any reason not obtainable, the new company would be assessable,

For the first year,

On the profits shown by the first accounts. It is usual in such cases, and cases of entirely new concerns, to leave the assessment till the first making-up.

For the second year,

On the profit of the first year.

For the third year,

On the average profits of the first two years,

and so on.

Mine purchased.

In the case of the owner of one mine taking over another mine, the profit should be assessed by taking the average result of each mine for the past five years, not, as has been suggested, by adding the profit of the second mine for the one year to the average profit of the original one during the past five years.

New business commenced.

Where, however, a person *commences an entirely new business* (not an addition to an existing business), and wishes to set off a loss in it against a profit in the old business (or *vice versa*), the return will be as follows :—

Profit of old business for 1905	...	...	£1,000
" " 1906	...	...	2,000
" " 1907	...	...	3,000
			3) 6,000
Average	...	...	2,000
Loss of new business for 1907	...	...	1,000
Return for 1908-9	...	...	<u>£1,000</u>

**New business
commenced.**

Not, as has been suggested,

Profit of old business for 1905		£1,000
" " 1906		2,000
" " 1907	£3,000	
Loss of new business for 1907	1,000	
		2,600
		3) 5,000
Return for 1908-9	...	<u>£1,666</u>

Another point suggested is where a single-ship company owning one ship buys another. Such a state of affairs, though a contradiction in terms, is not unknown. Is the company still to be assessed as the *same concern*? This would appear to be a case for special treatment, and an equitable view would be to assess on the average profits of the old ship added to the profits of the new ship for the year, and allow depreciation on both vessels. The case is different from that of a company owning a fleet of steamers varying by one or two year by year. In such a case the company is assessed on past profits without regard to the number of steamers actually running in the year of assessment.

**Single-ship
company
buying other
ships.**

Specific cause
and directors'
fees.

“ Specific cause ” arises most frequently in the case of a partnership being converted into a company.

Assume a uniform profit of £1,000 drawn by two partners equally, and that, on incorporation, they become entitled to *salaries as directors* of £500 each. The business is firstly assessed on the basis of past results at £1,000 under Schedule D, and the directors are individually assessed on £500 each under Schedule E. It is therefore clear that, for the first year, there are assessments amounting to £2,000 in respect of an anticipated profit of £1,000. If the business improves and makes £2,000 before salaries (= £1,000 net), there is no relief, and the company pays on £1,000 more than it would have done had it continued as a partnership. This is a new practice, which has only sprung up within the last year or two. Formerly, an *original assessment* would have been amended as a matter of course by adjusting the profit of each of the past years coming into average by the amount of fees for the current year which were coming into assessment under Schedule E.

Assume, again, that we have a private company with a fairly constant profit of £1,000 per annum, and that previous to the 1907 Act the (practically) sole shareholder, seeing that it then made no difference, did not have any salary, and drew all the £1,000 as dividend. Since 1907 he decides (and fulfilling the spirit of the Act, too, and not by way of evasion) to draw the £1,000 as salary, and pay on it at 9d. in the £. As soon as this is known, an assessment under Schedule E is made immediately, and he stands, for the time being, with the

two assessments upon his profit. Other things being equal, the profit of the company will come out, after fees, at *nil*, and, the profit having fallen short from the “specific cause” of the fees, the assessment on the company will be discharged, and he will only bear a fair tax.

Specific cause
and directors’
fees.

But, wrongly in our view, the same effect will not be accomplished if he had previously had a salary of £500 and dividend £500, and then decided to take the whole £1,000 as salary. We are told that an increase of salary is not a “specific cause,” and profits being as follows :—

Profit Year to 31st March 1904 (after £500 fees)	£500
“ “ “ 1905 “ “ “	500
“ “ “ 1906 “ “ “	500
“ “ “ 1907 (after £1,000 fees)	Nil
“ “ “ 1908 “ “ “	Nil
“ “ “ 1909 “ “ “	Nil
“ “ “ 1910 “ “ “	Nil

Tax is assessed :—

		Schedule D. (on average)	Schedule E. (actual)
Year 1906-7	...	£500	£1,000
“ 1907-8	...	333	1,000
“ 1908-9	...	167	1,000
		<u>£1,000</u>	<u>£3,000</u>

and the result is that tax is paid in three years on £4,000 instead of £3,000, and it is only from the following year onwards that the full benefit is obtained.

It may possibly be that sec. 134 *was* really meant to apply only to a *cessation* of profit, in which case it is not available in the illustration given, and the original “succession” rule (p. 327) is clearly not applicable. The fact remains, however,

Specific cause
and directors'
fees.

that, possibly by concession, such adjustment used to be allowed, and has now been withdrawn. One sees the *practical* difficulty of allowing a dividend in a private company (which is really "earned") to be regarded as such, but all representations in that direction were received sympathetically in the House, and the authorities, in this respect, are going out of their way to refuse the differential rate, where it might easily be granted without in any way straining the law.

Principle in
cases of
change or
"succession."

These cases of "change" and "succession" are frequently difficult to deal with, but the principles to be followed appear to be :—

- (1) If the business is substantially the same business the profits are to be computed on the basis of past results, without any adjustment in respect of the change.
- (2) If the business has been materially changed by the acquisition of some other business previously carried on, the past results of that business must be taken into account.
- (3) If, on the other hand, the business has been materially changed by the sale or discontinuance of a portion of the business, the future basis of assessment is to be upon the past results of the portion remaining, an assessment being on a business *carried on*.
- (4) If it is impossible to obtain the result of the business acquired, or the portion discontinued, we think the business might fairly be assessed as a *new one*.

A person carrying on, either alone or in partnership, two or more distinct trades, &c., chargeable under Schedule D, is entitled to set off a loss on one against a profit on another (1842, sec. 101), but it is only since 1890 that power has been given to set off a loss in trade against taxed interest or other income (see Part III. of this chapter, and also the case of *Grimes v. Letham* (*post*)).

Loss on one trade may be set off against profit on another.

In the somewhat exceptional case of a person being an employee in one business and owning, or being a partner in, another, he is not "carrying on two or more trades," and in the event of the business showing an average loss he cannot set this off against the salary under sec. 101, but he can claim repayment under the Act of 1890 (*q.v.*)

Person being both partner and employee.

Where one company owns (practically) all the shares of another company, and thus controls it, the two companies are still, for the purpose of assessment, treated as quite distinct. As to setting off a loss in one company against a profit in the other under the Act of 1890, see *post* (Part III. of this chapter).

One company owning another.

The case is stronger where the one company does not hold all the shares of the other. In *J. J. Farrell* (*Surveyor of Taxes*) *v. The Sunderland Steamship Company, Lim.* (King's Bench Division, 13th May 1903) the facts were that the company owned only one ship, the "Brookside." In May 1900 they purchased 59/64ths of the "Glendochart," and took over the management of her. Assessments for 1901-2 were made as follows :—

Farrell v. Sunderland S.S. Co.

**Farrell v.
Sunderland
S.S. Co.**

In respect of profits of the "Brookside" :—

1898	...	...	...	...	£4,409
1899	...	...	...	...	4,878
1900	...	...	...	...	5,566
					<u>3)14,853</u>
Assessment for 1901-2	...	...	...	...	<u>£4,951</u>

In respect of profits of the "Glendochart" :—

7½ months' profit to 31st December 1900	...	£1,874
Assessment for 1901-2 (for 12 months)	...	<u>£3,101</u>

(The accounts for previous years were not available, and it was agreed to deal with the ship on the basis of actual profits for the period.)

The company contended that the proper method was :—

"Brookside," 1898	...	...	£4,409
„ 1899	...	...	4,878
„ 1900	...	...	£5,566
"Glendochart," ¾ths of £1,874	...	1,726	
			<u>7,292</u>
			<u>3)16,579</u>
Assessment for 1901-2	...		<u>£5,526</u>

The Commissioners found that the acquisition of the "Glendochart" was a mere expansion of business.

The Surveyor contended that there were two separate concerns, with separate books, and that the third rule of Case I. and II. (see p. 327) applied. He relied on the case of *Attorney-General v. Borrodaile*, decided in 1814.

Ridley, J., in giving judgment for the Crown, said that he had some doubt whether there might not be a distinction between the partner who merely owned some 64th shares and

the partner who took an active share in the management, but that the case quoted was a case precisely in point, and doubt had never been thrown upon it; that case decided that under words exactly the same as the third rule the ship's husband, or owner, was held to be bound to make the return on behalf of all the other partners.

A claim by the Corporation of Birmingham to set off a loss on carrying on a trade so far as public baths, schools, sewage works, &c., were concerned, against a profit on other concerns was disallowed by the Court (*In re Corporation of Birmingham*, Court of Exchequer, 9th June 1875). It was held that the corporation could not be considered as carrying on two or more trades within sec. 101 (above).

in re Corporation of Birmingham.
A corporation does not carry on two or more trades within the Act.

A difficulty arising in the case of underwriters is that it is almost impossible for them to make up their accounts to show the profits for the three years immediately preceding the year of assessment. In 1891 an underwriter appealed against an assessment upon him for the year 1890, and produced accounts for 1886, 1887, and 1888, claiming to have the assessment reduced to the average of those years, and contending that it was impossible to show any accounts of a later date. The Surveyor objected, but the Commissioners amended the assessment as desired. The Surveyor gave notice of appeal, but the Board of Inland Revenue decided not to proceed with the appeal, and accepted the decision of the Commissioners.

Underwriters.

Mode of
assessment
in case of
municipal
corporations.

The assessment of municipal corporations has been revolutionised by the decision of the House of Lords in the case of *Attorney-General v. London County Council*. The previous practice was given in the appendix to the Third Edition, including the case of *London County Council v. Grove*.

*A.-G. v.
London C.C.*

The facts in the *London County Council* case were as follows :—The amount paid by them as dividends and interest on loans in the year 1897-8 was £1,142,884. The *stock* and the *dividends* thereon are, by virtue of the Metropolitan Board of Works (Loans) Act, 1869, and subsequent Acts, made a charge upon the lands, rents, and property belonging to the London County Council and their predecessors (the Board of Works), and on the rates to be levied by the Council. The London County Council deduct tax on payment of dividends, and the question arose as to how much of such tax they were entitled to retain under sec. 24 of the Act of 1888. The Attorney-General contended that by reason of this charge only a rateable proportion (if any) of the dividends could be regarded as payable out of profits or gains charged. He contended alternatively :—

1st. That no part of the interest was payable out of profits.

2nd. Only such part was payable out of profits as was payable out of interest received by the London County Council from local authorities in respect of loans to them.

3rd. That such interest being payable indifferently out of **A.-G. v. London C.C.**

(a) Interest received ; and

(b) the remainder of the Consolidated Loans Fund
(both capital and income),

only a proportionate part was payable out of profits
charged.

Eventually the Crown abandoned the first alternative.

In the Queen's Bench Division, 1st June 1899, Day and Lawrence, JJ., gave judgment for the Crown, holding that the third alternative was the correct method ; also that Schedule A and Schedule D were distinct, and that sec. 24 of the Act of 1888 had no reference at all to Schedule A.

**Queen's Bench
Division
thought Schs.
A and D
were distinct.**

The Council appealed, and the case came before the Court of Appeal, 4th, 5th, and 20th December 1899, when the appeal was dismissed. Smith, Collins, and Vaughan Williams, L.JJ., were unanimously of the same opinion as the lower Court as to Schedule A and Schedule D being distinct. Collins, L.J., thought the London County Council might have appropriated, and would have been justified in so appropriating their funds as to put themselves in a position to prove that they had actually applied certain *specific sums* of the Consolidated Loans Fund in a particular manner, and thus entitle them to retain tax on certain portions of the dividends paid—but they had not done so. Vaughan Williams, L.J., was of the same opinion ; he, however, held that in applying the third alternative (above) regard was not to be had to any part of the fund which was *capital*, but only to such part as was income.

**Court of
Appeal
confirmed
decision of
Queen's Bench
Division.**

A A

**A.-G. v.
London C.C.**

**House of
Lords allowed
appeal.**

The County Council again appealed, and the case was heard in the House of Lords, 23rd, 24th, and 26th July 1900, before Lords Macnaghten, Davey, James of Hereford, Brampton, Robertson, and Lindley. Judgment was given on the 10th December 1900, when their Lordships unanimously allowed the appeal, and reversed the decision of the lower Courts.

**Act of 1888.
"Paid out of"
profit.**

Lord Macnaghten dismissed the idea of having regard to both the capital and income of the Loans Fund as "an ingenious but not very business-like suggestion," and "not open to argument." He called attention to the fact that in sec. 24 of the Act of 1888 the word "payable" was first used, and later the word "paid," and drew the conclusion that so far as interest was in fact paid out of profit (whether in law payable thereout or not) the person paying might deduct and *retain* the tax. He then proceeded :

**Schs. A & D
not distinct.
Income tax is
one tax.**

"Income tax, if I may be pardoned for saying so, is a tax on income. It is one tax, not a collection of taxes essentially different. There is no difference in kind between the duties of income tax assessed under Schedule D and those assessed under Schedule A, or any of the other schedules of charge."

Again,

"But to read the enactment (the Act of 1888) as imposing a double duty would be contrary to the whole scope of income tax legislation, and whimsical in the highest degree, when you consider that the double burden would necessarily fall upon the fundholder, in whose case the collection of duty is certain, while a person chargeable under Schedule D would be expressly exempted from double duty."

Lord Davey, in the course of a like judgment, alluded to the view of Collins, L.J., that the London County Council

might have made some appropriation of their funds; he (Lord Davey) thought it difficult to see how any account-keeping by the debtor could alter the rights of the Crown.

A.-G. v. London C.C.

Tax paid under Schedule A on property *occupied by the Council*, and which, therefore, does not produce any rent, cannot be set off against tax deducted from interest paid (*Attorney-General v. London County Council*, House of Lords, 22nd and 25th June 1906 and 19th March 1907). The Council paid interest amounting to £1,371,000. This was paid as to £838,000 out of rents, &c., and as to £533,000 out of rates. The Council were assessed to Schedule A, in respect of premises occupied by them, on £118,000. It was agreed that tax was rightly deducted and *retained* on £838,000, and the only point at issue was whether the Council should pay over to the Crown tax on the whole of the remaining £533,000, or whether they were entitled to retain on £118,000, and were only liable to pay over on £415,000. The Crown relied on the words "paid" in sec. 24 of the Act of 1888. The King's Bench Division held that the substance of the matter should be looked at; that the Council in effect raised £118,000 out of rates to pay for their occupation of the land, &c., in question; that the land had no real value to them, being charged to its full value, and tax paid on it under Schedule A; that if they had to hand over tax on the whole £533,000 the Crown would be getting tax twice on £118,000.

Tax paid on premises occupied cannot be set off against tax deducted from interest payable.

They, therefore, held that the Council were entitled to the relief claimed. This was confirmed by the Court of Appeal, but the House of Lords unanimously decided to the contrary.

*A.-G. v.
London C.C.*

Tax paid on
premises
occupied
cannot be set
off against
tax deducted
from interest
payable.

Loreburn, L.C., said that the only question was as to
£118,000.

"This," he continued, "is not paid out of profits and gains brought into charge. It is paid out of rates; and on the rates which the Council pays over to its creditors it is bound by the proviso at the end of sec. 102 of the Act of 1842 to deduct the tax and pay it over to the Crown. It is said that the effect of this conclusion will be to tax the same income twice over. I cannot see this. The County Council pays tax on £118,000, the annual value of their own land, which they occupy. The holders of consolidated stock pay tax on £118,000, the annual interest of the debt due to them from the County Council. It seems to me that the two incomes are different, and the persons who receive and enjoy them are different, and the persons who pay income tax on these two incomes respectively are also different."

Lord Macnaghten said the stock and dividends were charged "indifferently" on the whole of the lands, rents, and property, and on the rates.

"I cannot understand," he said, "what the property in the occupation of the Council has to do with the matter. It stands apart. It is quite true that this property is charged in favour of the holders of metropolitan stock, but the charge is not, and never can be, operative. It is superseded by the charge on the rates and vanishes altogether. The 'profits and gains' derived from the property in the occupation of the Council are charged at their source in the hands of the Council under Schedule A. The stream flows no further. . . . The Council are secure in the full and beneficial enjoyment of the property which they occupy. What possible claim can there be to relief or indemnity as regards income tax in respect of this property?"

He thought Channell, J., had misapprehended Lord Davey's observations as to the income of incumbered property being the income less interest on the incumbrance. That proceeded on the assumption of the interest being a real burden.

If such interest was discharged by a person other than the owner the burden was nominal. In the present case the property never contributed, and was worth as much as if it were not charged. Collins, M.R., he said, had likewise accepted those remarks of Lord Davey. He himself agreed that the Crown could not ask for the tax twice, but here it only received it once. By the contention of the Council there might be taxable income, and the Crown might still receive no tax on it. For example, suppose the dividend on stock was £100,000; if there was no property in their occupation, and the dividend was raised entirely by rates, the Crown would receive tax on the whole; but if they acquired and occupied property, the amount would gradually diminish, and when the annual value reached £100,000 would vanish altogether. The property itself pays tax under Schedule A, whoever may be the owner and occupier, but they would lose tax on the dividends if, when collected, it went to recoup the Council for tax under Schedule A.

*A.-G. v.
London C.C.*

Tax paid on premises occupied cannot be set off against tax deducted from interest payable.

Lord James of Hereford entertained grave doubts as to the correctness of the judgments delivered, but his doubts were not strong enough to cause him to dissent.

Lords Robertson and Atkinson concurred.

The question of the right to set off tax on interest paid against profit on earning departments came before the Court in *Leeds Corporation v. Sugden* (King's Bench Division, 14th February 1911).

*Leeds Corporation
v. Sugden.*

Tax on interest paid and taxed profit of productive departments.

Leeds Corporation v. Sugden.

Tax on interest paid and taxed profit of productive departments.

The Corporation were assessed to Schedule A in respect of their waterworks, gasworks, tramways, markets, electric lighting undertaking, and annual value, in the sum of £270,036. By their Act of 1901, loans originally raised on various securities were charged indifferently on all the undertakings and on the rates; there was also to be established a Dividends Fund, out of which interest was to be paid. The total interest was £285,446, thus showing £15,410 in excess of tax-paid income. The position was as follows:—

	Taxed Income.	Dividends Fund.	Difference.
Waterworks	£88,498	£64,236	£24,262
Gasworks	48,345	43,702	4,643
Tramways	25,320	19,092	6,228
Electricity	8,748	19,258	£10,510
City Fund and Rate	63,105	19,719	43,386
Consd. Rate Fund ...	36,020	119,439	83,419
	<u>£270,036</u>	<u>£285,446</u>	<u>£78,519</u>
			<u>£93,929</u>

The Crown sought to tax the sum of £93,929 on the ground that to that extent the interest was not paid out of taxed profit. The Corporation tendered tax on the £15,410, contending that, except as to this sum, the interest was paid out of profits taxed.

The Court (Hamilton, J.) decided in favour of the Crown. He said it had been contended that the Corporation must resort to its income before resorting to rates, and that in contemplation of law that must be deemed to have been done which ought to have been done. He did not understand that to be contested, if it could be shown that on the provisions of all the Leeds Acts it could be established that the corporation

could lawfully apply all and any of its incomings to the discharge of all and any parts of the interest upon the whole unified loans. But he did not think that was so. It was manifest that, if so, interest payable out of the consolidated rate (where there was differentiation) might have been applied out of the Borough Fund (where there was no differentiation). Lord Davey's expression (*London County Council* case) that it was enough "if the interest is charged upon or payable out of the taxable income," might seem to support the argument for the corporation, as it was (in certain remote contingencies) so charged; but this must be read in connection with the exposition of Lord Macnaghten in the subsequent case: "It is quite true that this property is charged in favour of the holders of the Metropolitan Stock, but the charge is not and never can be operative."

Leeds Corporation v. Sugden.

Tax on interest paid and taxed profit of productive departments.

In the Court of Appeal, however, this judgment was reversed (29th July 1911) (Kennedy, L.J., dissenting).

The Master of the Rolls said that in the Leeds Act of 1901 some of the sections were inconsistent, and as to one section he had been unable to understand it at all. He had, however, come to the conclusion that the interest on the loans was no longer payable out of the net receipts of each separate undertaking.

Farwell, L.J., said the contention of the Crown amounted to a claim for the payment of tax twice over.

Income tax a personal tax, and each partner should be charged with tax on interest and salary.

It should be remembered that the income tax is a personal tax, and in the case of a partnership care should be taken to deduct income tax on the partners' salaries and the interest on their capital before crediting them ; otherwise, unless their capital is equal, the one gains a benefit at the expense of the other. For instance, suppose the result of the trading is as follows :—

Profit for income tax purposes	£20,000
Less, A., one year's interest on £200,000 at 5 per cent.	£10,000
B., one year's interest on £100,000 at 5 per cent.	5,000
	<u>15,000</u>
Profit for division equally	<u>£5,000</u>

In the ordinary course the firm pay tax on £20,000, and it is charged against the profits, falling equally upon the partners. But as between the two of them,

A. should pay tax upon :—

Interest	£10,000
Half share of profit	2,500
	<u>£12,500</u>
And B should pay on :—	
Interest	£5,000
Half share of profit	2,500
	<u>7,500</u>
	<u>£20,000</u>

Taking tax at 1s. in the £, the amount payable would
be £1,000
of which

A. should bear (tax on £12,500) ... £625

And B. should bear (tax on £7,500) 375

£1,000

Income tax
a personal
tax, and each
partner
should be
charged with
tax on
interest and
salary.

As a matter of bookkeeping, it is convenient to debit
" Interest Account " with the total interest on capital,

£15,000

Crediting A. with interest £10,000

Less Income Tax 500

9,500

„ B. with interest £5,000

Less Income Tax 250

4,750

And crediting the Com-
missioners of Inland

Revenue with the tax...

750

£15,000

It is then necessary to credit the Commissioners and debit
Profit and Loss Account with the tax upon the profit divisible
(£250), and the Commissioners' Account is closed by a cash
posting when the tax (£1,000) is paid.

It must be borne in mind that the accounts and figures are
set out in the preceding pages to illustrate the method to be
adopted in order to *arrive at* the proper amount to return for
assessment—that is, the figure to be filled in on the second
page of the Form No. 11, furnished by the assessor. It
is not absolutely necessary to render a copy of the accounts
in the first instance, though this is usually asked for.

Common
errors in
returning
profits.

The accounts set out on pages 153 and 154 would apply to almost any trading business ; it has not, therefore, been considered needful to give more than the two forms. The principle is always the same. In case the books have been properly kept, it is a simple matter to prepare the accounts and arrive at the proper figure. Many persons, however, return as their income for assessment the amount they have drawn from their business. This is entirely wrong. The amount to be returned is the profit earned in the business, *entirely apart from any question of drawings*. In the same way, where the books have not been properly kept, regard must be had to the debts owing to and by the business, and to the stock on hand at the commencement and end of the period under review ; not simply to the cash sales and payments for goods bought.

CHAPTER VI.—(continued).

SCHEDULE D.—(continued).

PART III.—*Appeals.*

A PERSON so desiring may appeal against any assessment upon him by the Additional Commissioners, either to the General or Special Commissioners (1842, secs. 118 and 130). He must give ten days' notice in writing to the Surveyor. A person claiming exemption on the ground that his income does not exceed £160 per annum must, however, appeal to the General Commissioners (1842, sec. 130). Very extensive powers are conferred on the Commissioners as to statements to be rendered and evidence to be sworn in connection with appeals. If it is contended that the decision of the General or Special Commissioners is erroneous *in point of law* they may be required to state a case for the opinion of the High Court, or, in Scotland, for the opinion of the Court of Session, and an appeal lies from the decision of the High Court to the Court of Appeal, and thence to the House of Lords, or, in Scotland, from the Court of Session to the

Appeal to General or Special Commissioners.

Person claiming exemption must appeal to General Commissioners.

Stating a case for opinion of Court.

Stating a case for opinion of Commissioners of Inland Revenue.

House of Lords (1880, sec. 59). In the event of an appeal being heard before the Special Commissioners, they may be required to state a case upon *any* point for the opinion of the Commissioners of Inland Revenue, whose decision is conclusive (1842, sec. 131). There has not been any appeal to the Board under this section within the last thirty years, and in reply to an inquiry on the point some years ago they replied that “a mere question of fact, if submitted to them, “would seem to fall under their consideration as having the “general administration of the tax,” and they suggested that the facts should be put in writing, and they would then state their views thereon. Further, there is only power to do this when the assessment has been *made* by the Special Commissioners, not if made by the General Commissioners. The decision of the General Commissioners on a question of fact is conclusive (1842, sec. 126).

Question of fact.

By sec. 57, sub-sec. (9), of the Act of 1880 it was provided that :

Right of solicitor, &c., to appear.

“No barrister, solicitor, attorney, or any person practising the law shall be allowed to plead before the said (General) Commissioners on such appeal for the appellant or officers, either *viva voce* or by writing,”

but this is now repealed by sec. 16 of the Act of 1898, which is as follows :—

“Section 57 (9) of the Taxes Management Act 1880 is hereby repealed, and it shall be lawful for the General Commissioners to permit any barrister or solicitor to plead before them on any appeal for the appellant or officers, either *viva voce* or by writing.”

It will be noticed that the matter is wholly in the discretion of the Commissioners.

But by the Revenue Act 1903, sec. 13, if the General Commissioners refuse to permit a barrister or solicitor to plead before them, or to hear any accountant, the appellant may appeal to the Special Commissioners, who are required to hear such barrister, &c.

Right of
solicitor, &c.,
to appear.

In the case of *The Queen v. Chew and others; ex parte Fletcher* (Queen's Bench Division, 26th July 1894), Mr. Fletcher appealed against an assessment upon him and sent a schedule as required, and appeared before the Commissioners, who confirmed the assessment and refused to state a case, there being, in their opinion, no question of law. Mr. Fletcher applied for a *mandamus* to the Commissioners to state a case, stating in his affidavit that

*Queen v.
Chew.*

Refusal to
produce books.

Request to be
put on oath
refused.

Rule for
mandamus
to Com-
missioners
discharged.

"no objections were taken to my accounts and I offered to verify them on oath, but they proceeded to deal with the appeal, and, after asking me several questions as to my accounts, confirmed the assessment, quite ignoring the accounts."

In answer to this, two of the Commissioners made an affidavit stating that he was offered an opportunity of explaining the accounts he had sent in, and acknowledged that they had been prepared by Mr. J. J. Hitchings, managing director of the Rate and Tax Payers' Assessment Protection Association, from particulars sent by Mr. Fletcher's son, and that Mr. Hitchings had not had access to the books, &c. Further, that Mr. Fletcher had been asked* to produce books, &c., and he had refused to do so. "Under all the circumstances," they continued, "we considered we were not bound, and that it

*No one can be *compelled* to produce his books.

*Queen v.
Chew.*

Refusal to
produce books.

Request to be
put on oath
refused.

Rule for
mandamus
to Com-
missioners
discharged.

“ was useless to put Mr. Fletcher on his oath with regard to
“ figures which he had not himself prepared, or to adjourn the
“ case for evidence which he declined to produce ; and, having
“ regard to the fact that the evidence already given by him,
“ and the accounts, were unsatisfactory, we confirmed the
“ assessment.” By sec. 118 of the Act of 1842 power is given
to any person to appeal against an assessment to the Com-
missioners for General Purposes (or by sec. 131 to the
Commissioners for Special Purposes), and they are to require
the party to send a schedule respecting his profits (sec. 120),
and by sec. 122 they may give notice to the party to appear
before them to verify the statement on oath. By sec. 123 the
Commissioners may put any question, and demand an answer
in writing, and by sec. 124 they may call upon him to verify
his answers on oath. By sec. 125 they may examine upon
oath any other person whom they think able to give evidence
respecting the assessment. A rule *nisi* had been obtained for
a *mandamus*. It was contended on the one hand that the
Commissioners should be satisfied as to the truth of the
accounts, and that, as they were not satisfied, and they were
not bound to be so on a mere offer to verify by the party’s own
oath, it was a mere matter of fact, and no question of law
arose. On the other hand, it was urged that, as the Com-
missioners had not accepted Mr. Fletcher’s offer to verify the
accounts by oath, and had not required any amendment of the
schedule, they were bound to accept it, and were not entitled
to ignore it.

The Court (Mathew and Kennedy, JJ.) being divided in
opinion, the junior Judge withdrew his judgment, and the rule

was discharged, with leave to appeal. Mr. Justice Mathew said that the contention of the appellant—that the Commissioners are conclusively bound by an affidavit as to the profits—was a startling one, and totally opposed to his view. From the conduct of the appellant the Commissioners were entitled to come to the conclusion which all reasonable men would come to, that the figures were not to be depended on.

Queen v. Chew.

Refusal to produce books.

Request to be put on oath refused.

Rule for *mandamus* to Commissioners discharged.

The case was heard, on appeal, in the Court of Appeal (24th and 25th October 1894). It was contended for the appellants that the Commissioners had based their decision on the refusal of the appellant to produce his Pass Book and vouchers, but that they were not entitled to demand such production. That the sections referred to provided that where the Commissioners were dissatisfied with the schedule presented, they might test its accuracy by calling upon the appellant to verify it upon oath, or by examining witnesses. That he should have been sworn as he had desired; and the Commissioners, by their conduct, had practically declined to hear his case. On the other hand, it was argued that the appellant was not entitled to require that he should be sworn, and his answers treated as conclusive. Further, that secs. 123, &c., only applied where the Commissioners were not satisfied with the assessment or the schedule; and as, in this case, they were satisfied with the assessment, sec. 122 applied. They were not, however, bound to require him to verify the statement on oath, and, after the appellant had stated that he had not himself prepared the schedule, they were justified in refusing to allow him to be sworn. They had examined

Queen v. Chew.

Refusal to produce books.

Request to be put on oath refused

Rule for *mandamus* to Commissioners discharged.

the schedule, and were justified in coming to the conclusion that it could not be relied on.

The Court dismissed the appeal, and ruled that the case depended on sec. 122. The Commissioners could not be called upon to place a party on oath. If they thought that the schedule was not satisfactory, they were justified in deciding not to call for any verification on oath. If any point of law had been raised, it was a bad point. The decision of the Commissioners seemed a pure decision of fact, and, therefore, the application for a *mandamus* must fail.

Conduct of appeal.

Usually not necessary to appear before Commissioners.

Though appeals are actually settled by the Commissioners, yet, as a general rule, it is not necessary for the party to appear personally. In practice it is the custom when a person is dissatisfied as to any assessment made upon him to call upon the Surveyor, and explain the ground of his dissatisfaction, producing accounts in support of his case. If the Surveyor is satisfied with the accounts he will place them before the Commissioners, and the appeal, whether for adjustment or repayment, will be allowed. It is only when the taxpayer and the Surveyor cannot agree that it becomes necessary to actually appear before the Commissioners on an appeal.

Act of 1890.

Relief on ground of loss in the year.

Provided the return for assessment to Schedule D has been properly prepared on the average of the past three years, as explained in the preceding Part of this Chapter, the only relief granted to a trader on the ground of diminishing profits is under the Act of 1890, which is dealt with later.

In *Re Calvert (ex parte the Debtor) v. Walker* (Queen's Bench Division, 4th May 1899) application was made in bankruptcy to expunge a proof by the collector of taxes on an assessment made on an estimated profit of £10,000. It was argued that the Court could go behind the assessment in the same way that it could go behind a judgment, and inquire whether or not there was a debt; that if it were not so a man might, when on the eve of bankruptcy, return his profits at a fictitiously high sum, and thus, through spite, defeat his creditors.

***Re Calvert.*
Proof in
Bankruptcy.**

The Court gave judgment for the Crown, holding that the assessment was not like a judgment; further, that if a man did as was suggested, possibly it could be dealt with as a fraudulent preference to the Crown.

Section 133 of the Act of 1842 and the Act of 1865 are repealed by the Act of 1907 in respect of the year 1907-8, or any subsequent year (1907, 24 (1)). Section 24 (2), however, contains the following important provision in respect of a new business :—

Where a person charged or chargeable with income tax in respect of any profession, trade, or vocation which has been set up or commenced within the period of three years upon the average of which the profits or gains are to be taken under the Income Tax Acts, or within the year of assessment, proves at the end of the year of assessment to the satisfaction of the Commissioners by whom the assessment has been or can be made that the actual profits or gains arising from the profession, trade, or vocation in the year of assessment fall short of the profits or gains as computed in accordance with those Acts, he shall be entitled to be charged on the actual amount of the profits or gains so arising instead of on the amount of the profits or gains so computed, and, if he has paid the full amount of the tax on the profits or gains so computed, be entitled to repayment of the amount overpaid.

**Concern set
up within
three years.**

Re Calvert.

It will be noticed that this section is purely in favour of the taxpayer, giving him the right to appeal if his profits fall short, but not giving any corresponding power to the Crown if the reverse is the case.

Since the repeal of sec. 133 the cases of the *Cape Copper Mining Co., Lim.* (*The Queen v. Commissioners for Special Purposes of Income Tax*) and *Russell v. North of Scotland Bank, Lim.*, are obsolete.

**Limitation
of time for
making
claims under
various Acts.**

In “Dowell’s Income Tax Laws” it is pointed out that in the Acts of 1842 and 1853 the time for claims is dealt with in six cases.

1. Act of 1842, sec. 61. As to omission to claim allowances under Schedule A.

Here the Act grants relief “if at any time” it is found that certain allowances have not been claimed.

2. Act of 1842, sec. 105. As to exemption of charitable institutions.

3. Act of 1853, sec. 54. As to abatements in respect of life assurance premiums.

In those two cases the Acts are silent.

4. Act of 1842, sec. 134. As to abatement to be allowed where a person ceases to carry on a trade, or to receive a salary, or dies.

This claim is to be made within three months after the end of the year of assessment.

5. Act of 1853, sec. 18. As to relief granted to landlords in Ireland, where the rent is lost by bankruptcy, &c., of tenant.

Limitation
of time for
making
claims under
various Acts.

This claim to be made within six months after the end of the year of assessment.

To these we might add :—

Act of 1842, sec. 171.—Double assessment. Here relief is granted “ whenever ” a person has been doubly assessed (see p. 151).

Act of 1851.—Appeal by farmer on ground of profits falling short of the assessment under Schedule B. This is to be within three months after the expiration of the year of assessment, but see Act of 1896 (*ante*, p. 36).

Act of 1878.—Wear and tear of machinery let. Here the claim must be made within twelve months after the expiration of the year of assessment.

Act of 1890.—Appeal in case of loss, with reference to aggregate amount of income. Here notice is to be given to the Surveyor in writing within six months after the expiration of the year of assessment.

Act of 1907.—Relief to “ earned ” incomes. Here the claim is to be made before 30th September in the year of assessment.

Act of 1860.

Section 10 of the Act of 1860 (p. 301) shortens the unlimited periods, but does not lengthen the limited ones.

**Act of 1842,
sec. 134.****Abatement
where
business
ceases.**

Abatement is allowed when a person ceases to exercise any trade, or dies before the end of the year of assessment, and any overpayment by him may be repaid (1842, sec. 134).

This section is as follows :—

In case any person charged to the said duties under Schedule D, whether the computation thereon shall have been made on the profits of one year or on an average as herein allowed, shall cease to exercise the profession, or to carry on the trade, employment, or vocation, in respect whereof such assessment was made, or shall die or become bankrupt or insolvent before the end of the year for making such assessment, or shall from any other specific cause be deprived of or lose the profits or gains on which the computation of duty charged in such assessment was made, it shall be lawful for such person, or his executors or administrators, to make application to the Commissioners for General Purposes of the district within three calendar months after the end of such year, and on due proof thereof to their satisfaction the said Commissioners shall cause the assessment to be amended, as the case may require, and give such relief to the party charged, or his executors or administrators, as shall be just; and in cases requiring the same the said Commissioners shall direct in manner before mentioned repayment to be made of such sum as shall have been overpaid on the assessment amended or vacated :

Provided always that where any person shall have succeeded to the trade or business of the party charged no such abatement shall be made, unless it shall be proved to the satisfaction of the said Commissioners that the profits and gains of such trade or business have fallen short from some specific cause, to be alleged to them and proved, since such change or succession took place, or by reason thereof, but such person succeeding to the same shall be liable to the payment of the full duties thereon without any new assessment.

It will be noticed that the relief granted is that the Commissioners are to cause the assessment to be amended, "as the case may require," and to give such relief "as shall be just." The practice always was to decide such claims on the result of the trading (or as the case might be) for the portion of the year during which the trade, &c., had been carried on, without reference to averages; that is, of course, where diminution of the amount of the assessment was sought—not mere discharge of the assessment for the portion of the year during which the trade, &c., had not been carried on. For example, a person is assessed for the year 1906-7 ending 5th April 1907 on £3,000. He discontinues business on the 5th October 1906. He might claim on appeal under this section to have the assessment discharged (whatever the amount of his profits) as to one-half, and he would then only be called upon to pay tax on £1,500. On the other hand, if he found he had only made, say, £1,000, he would claim to have the assessment reduced to the *actual profits in the portion of the year of assessment during which the business had been carried on*. The same remarks apply to the case of executors continuing the business of their testator for the purpose of winding-up.

Act of 1842,
sec. 134.

Practice as to
claims.

This has now been placed on the Statute Book (Finance Act 1907, sec. 24 (3)), with a further provision (*ante* p. 369) in lieu of the relief formerly given by sec. 133 of the Act of 1842. This sub-section is as follows:—

Act of 1907 as
to claims.

Where a profession, trade, or vocation is discontinued in any year, any person charged or chargeable with income tax in respect of that profession, trade, or vocation, shall be entitled to be charged on the actual amount of the profits or gains arising from the profession, trade, or vocation in that year, and shall also, if he proves to the satisfaction of the Commissioners, by whom the assessment has been or could have been made, that the total amount of the income tax paid during the three previous years in respect of that profession, trade, or vocation, exceeds the total amount which would have been paid if he had been assessed in each of those years on the actual amount of the profits or gains arising in respect of the profession, trade, or vocation, be entitled to repayment of the excess.

“Specific
cause.”

A liberal view used to be taken of the “specific cause,” and, as an illustration thereof, see the suggestion by Mr. Gayler (late Chief Inspector of Taxes) to the Committee which sat in 1904 (Question 257) that a doctor relinquishing patients on account of his age would be entitled to the relief. It is difficult to define what does, and what does not, fall within the category of “any other specific cause,” but there used to be every desire to meet necessities as far as practicable.

It is understood that Surveyors have recently (1911) received instructions not to admit any important claim under sec. 134 without submitting it to Somerset House.

In this connection relief has been refused where a business was entirely stopped for some time by reason of a fire, though it was claimed and admitted that three-fourths of the reduction in profit was due to the fire. In this case Somerset House set up that a specific cause must involve a permanent stoppage of the business.

Such a contention, if upheld, will render the section practically nugatory. **"Specific cause."**

If the "specific cause" section means anything, it is to meet such a case as this, and it is to be hoped that where the Crown endeavours to put such a strained construction on the Act it will be resisted before the Commissioners.

An important concession is granted to the taxpayer by the Customs and Inland Revenue Act 1890, sec. 23, which permits of losses being set off against taxed profits.* The section is as follows :— **Act of 1890.**

"(1) Where any person shall sustain a loss in any trade, manufacture, adventure, or concern, or profession, employment, or vocation, carried on by him either solely or in partnership, or in the occupation of lands for the purpose of husbandry only, it shall be lawful for him, upon giving notice in writing to the Surveyor of Taxes for the district within six months after the year of assessment, to apply to the Commissioners for the general purposes (extended by the Act of 1907, sec. 27, to the Special Commissioners) of the Acts relating to income tax for an adjustment of his liability by reference to the loss and to the aggregate amount of his income for that year estimated according to the several rules and directions of the said Acts. **Relief to trading or professional persons and farmers in case of losses.**

"(2) The said Commissioners shall, on proof to their satisfaction of the amount of the loss, and of the payment of income tax upon the aggregate amount of income, give a certificate authorising repayment of so much of the sum paid for income tax as would represent the tax upon income equal to the amount of loss, and such certificate may extend to give exemption or relief by way of abatement in accordance with the provisions of the said Acts. Upon the receipt of the certificate, the Commissioners of Inland Revenue shall cause repayment to be made in conformity therewith.

*In *Brown v. Watt* (Court of Session, Scotland, 20th February 1886) a claim to set off a loss under one schedule against a profit under another had been disallowed.

Act of 1880.

“(3) If any person shall be guilty of any fraud or connivance in making any application under this section, or in obtaining any such adjustment or certificate as aforesaid, he shall forfeit the sum of fifty pounds, to be recoverable as a penalty imposed by virtue of the Taxes Management Act 1880.

“(4) Where repayment has been made to a person in any year under the provisions of this section, he shall not be entitled to claim, or to be allowed, a deduction on the assessment for a subsequent year by reference to the amount of loss in respect whereof such repayment has been obtained.”

Circular of
Board of
Inland
Revenue.

A circular issued to Surveyors of Taxes by the Board of Inland Revenue says* :—

“In order to remove any doubts that may exist as to the exact interpretation to be put upon the section, and to secure uniformity of practice, the Board think it desirable to point out that the effect of the new enactment is, not to annul the provisions of the Act 5 & 6 Vict., cap. 35 (the Act of 1842), sec. 133, as amended by the Act 28 Vict., cap. 30 (the Act of 1865), sec. 6, but to supplement the relief afforded by those provisions by an allowance in respect of an actual loss. The new section deals with the case of an actual loss incurred in the year of assessment and not with a case of a diminution of profits below the estimate upon which the assessment has proceeded. The latter case, which, where there is a loss, must, of course, be a diminution to the extent of the absence of all profit, is a case provided for by the previous law, and to be dealt with accordingly.”

Method of
dealing with
claims.

As illustrating the proper method of dealing with claims, the circular gives the following hypothetical case :—

*The circular is reproduced *in extenso* but should now be read in the light of the repeal of sec. 133 and the Act of 1865.

A. B. is assessed and has paid duty on £6,900 for the year 1900-1, as under:—

Act of 1890.

Method of dealing with claims.

- | | | | |
|---|-----|--------|-------------------|
| (1) From rents and dividends | ... | £2,200 | Schedules A and C |
| (2) As a paper manufacturer | ... | 3,000 | Schedule D |
| (3) As a solicitor | ... | 1,000 | " " |
| (4) As clerk to Justices of the Peace | ... | 400 | " E |
| (5) As occupier of Lands for Husbandry only | ... | 300 | " B |

£6,900

On appeal at the end of the year, A. B. proves that he *lost* £3,000 by the paper mills, and £300 by farming, and that his profits as a solicitor amounted to £700 only. His liability, therefore, falls to be adjusted in the following manner:—

Income assessed 1900-01	Aggregate Income for 1900-01, estimated by the Rules and Directions of the Acts	Repayment to be made under 5 & 6 Vic. c. 35, s. 133; 28 Vic. c. 30, s. 6; 53 & 54 Vic. c. 8, s. 23; 59 & 60 Vic. c. 28, s. 27
Schedules A, C, E .. £2,600	£2,600 Schedules A, C, E.	
Schedule D 3,000	*2,000 } Ave. for 3 years	£1,000 .. Schedule D
Schedule D 1,000	1700 } including year of	300 .. Schedule D
Schedule B 300	†Nil	300 .. Schedule B
<u>£6,900</u>	£5,300	<u>£1,600</u>
Allow as a set-off the losses in the year 1901	3,300	3,300 .. Schedules B & D
Duty to be paid on	<u>£2,000</u> and repaid on ..	<u>£4,900</u>

* Profits from Paper Mills:	† Profits as Solicitor:	‡ Profits from farming:
1898 £4,000	1898 £800	1898 Nil
1899 5,000	1899 600	1899 Nil
<u>£9,000</u>		
1900 Loss .. 3,000	1900 700	1900 .. Loss of £300
3) <u>6,000</u>	3) <u>2,100</u>	
Average .. £2,000	Average .. £700	

Act of 1890.

The circular proceeds :—

“The Commissioners accordingly certify for repayment of duty on £4,900 under the Acts 5 & 6 Vict., cap. 35 (the Act of 1842), sec. 133; 28 Vict., cap. 30 (the Act of 1865), sec. 6 (Trades and Professions); 59 & 60 Vict., cap. 28, sec. 27; and 53 & 54 Vict., cap. 8 (the Act of 1890), sec. 23 (Relief in case of Loss); and retain in assessment the duty on £2,000.”

Effect of Act.

The circular concludes by calling special attention to subsec. 4 of sec. 23 of the Act of 1890.

Bruce v. Burton.

Land used by way of recreation.

In *Bruce v. Burton* (King's Bench Division, 10th May 1901) the appellant claimed under this Act to set off a loss under Schedule B against other income. In the case stated the Commissioners found that in their view the alleged loss was caused by the appellant using the lands (*inter alia*) for the purpose of breeding cattle by way of recreation, and not as a matter of business or on ordinary commercial principles.

The case was not heard in this connection, however, as the Court held that an appeal under sec. 59 of the Taxes Management Act only lies where there has first been a determination of an appeal by the General Commissioners; in this case there had been no such appeal; the assessment had been rightly made; he had made a claim for repayment.

This additional relief provided may not, in many cases, be of any further benefit, for any loss in a trade or business would come into average three times, which would amount to the same thing as an immediate repayment of tax on the amount of the loss. It would, however, be of advantage to the taxpayer in the case of a business where it was feared there might be a continuous loss for a number of years.

Where the loss exceeds the tax-paid income the *balance* of such loss will be used in future average. **Act of 1880.**

A point which might be looked upon as an objection in claiming the relief is that the person is to prove "the payment of income tax upon the aggregate amount" of his income. Many persons would object to disclosing their total income. In practice, however, this is sometimes taken to mean on income equal to the amount of the loss, the Surveyor being satisfied that all income is tax-paid. **Objection to claiming under Act of 1880.**

In the case of a club building company assessed under Schedule A and letting their premises to a political club, the accounts were :— **Club building company.**

To Various Payments	£	s	d	By Rent	£	s	d
" Balance	75	0	0		250	0	0
	175	0	0				
	<u>£250</u>	<u>0</u>	<u>0</u>		<u>£250</u>	<u>0</u>	<u>0</u>

After writing back the Schedule A assessment the result was a loss, and the company claimed under this Act. The claim was disallowed on the ground that the company did not "exercise any business in the nature of a trade."

An *average* loss is not sufficient. If the results were :—

1904 Profit ...	£20,000				
1905 Loss ...	20,000	Loss ...	£20,000		
1906 Profit ...	9,000	Profit ...	9,000		
1907		Profit ...	2,000		
	<u> </u>		<u> </u>		
Total ...	£9,000		£9,000 Loss		
	<u> </u>		<u> </u>		
Average ...	£3,000		£3,000 Loss		

Claim in relation to future returns.

Act of 1890.
Claim in
relation to
future returns.

This would not establish a claim for 1907-8. There must be a loss *in the year* 1907.

Assuming, then, an assessment of £3,000 for 1907-8, and a loss of £3,000 in 1907, the whole amount paid can be recovered. If this is done the year 1907 must be treated as nil for future averages.

Had the assessment been nil, tax could have been recovered to the extent of any taxed income of the taxpayer or his wife (the income of the latter being *his* income for all purposes). Thus, assume there is such income to the extent of £1,000, he would recover on that, and the *balance* of loss (£2,000) could be used for future averages.

The Act naturally provides that a loss once so used cannot be used in average again. To give a person the right to use the loss again in average would give him tax upon it twice—viz., the whole at once and one-third in each of the subsequent three years.

Obviously, where it is known or expected that the tax will rise, it may be better not to claim if certain that future years will give average profits. On the other hand, when the tax is falling, it is better to claim in any case.

It is understood that, reading sec. 163 with this section, the Board hold that where we have—

Assessment	1907-8	...	...	...	...	...	£1,500
Loss	1907	...	...	...	...	...	500
Private Income	1907	...	...	...	...	...	1,000

the £1,500 statutory income is to be taken into account in determining whether a claim for abatement arises when there is a claim under this Act, and we have a total income of £2,000 (£1,500 - £500 + £1,000) and not a total income of only £500 (£1,000 - £500), and there is no claim for abatement.

Act of 1890.
Claim in
relation to
future returns.

It is open to argument whether this construction is correct, and whether the "aggregate amount of his income for that year, estimated according to the several rules and directions of the said Acts," is not £500.

In addition to the point as to *rate* of tax, cases may arise where a claim under the Act, depriving one, as it of course does, of the right to use the loss in future averages, may affect an abatement or differentiation claim in the next three years.

On the other hand, there may be a benefit in getting the differentiation, &c., in the year of loss.

As *future* profits are the chief factor, it is, perhaps, idle to discuss the matter at length, but one example may be useful.

Thus, assume a person makes a fairly regular profit of £7,500 (with a little taxed income), but makes a loss of £3,001 in 1909, so that the results are :—

Year ended.							
1905	...	...	...	...	...	Profit	£7,500
1906	...	...	...	...	...	"	7,500
1907	...	...	...	...	...	"	7,500
1908	...	...	...	...	...	"	7,500
1909	...	...	...	...	...	Loss	3,001
1910	...	...	...	...	...	Profit	7,500
1911	...	...	...	...	...	"	7,500
1912	...	...	...	...	...	"	7,500

Act of 1890.

Claim in
relation to
future returns.

(We assume a loss of £3,001 to distinguish the figure from the £3,000 in excess of which super-tax is payable.)

It must be remembered that under the 1910 Act the *statutory income for 1908-9* is taken to see whether super-tax is payable for 1909-10, and so on.

For 1908-9 he would have returned and paid
on £7,500.

For 1909-10, if he made no claim, he would	
pay on £7,500 at 1s. 2d.	£437 10 0
Also super-tax on £4,500 (£7,500 (Assess- ment 1908-9) - £3,000) at 6d.	112 10 0
	<u>£550 0 0</u>

For 1909-10, if he made a claim, he would	
pay on £7,500 and recover on £3,001 = £4,500 at 1s. 2d.	£262 10 0
Also super-tax on £4,500 (£7,500 (Assess- ment 1908-9) - £3,000) at 6d.	112 10 0
	<u>£375 0 0</u>

For 1910-11, if he made no claim, he would	
pay on £4,000 ($\frac{2,500 + 7,500 - 3,001}{3}$) at 1s. 2d.	£233 6 8
Also super-tax on £4,500 (£7,500 (Assess- ment 1908-9) - £3,000) at 6d.	112 10 0
	<u>£345 16 8</u>

For 1910-11, if he had made the claim in 1909-10, he would pay on £5,000 ($\frac{7,500 + 7,500 + \text{Nil}}{3}$) at 1s. 2d.	£291 13 4
But no super-tax, the statutory income of 1909-10 being only £4,500 (£7,500 assessed - £3,001 loss).	

Act of 1890.

Claim in
relation to
future returns.

For 1911-12, if he made no claim, he would

pay on £4,000 $\left(\frac{7,500 - 3,001 + 7,500}{3}\right)$ at

1s. 2d. £233 6 8

But no super-tax, the statutory income of
1910-11 being only £4,000.

For 1911-12, if he had made a claim
in 1909-10, he would pay on £5,000

$\left(\frac{7,500 + \text{Nil} + 7,500}{3}\right)$ at 1s. 2d. £291 13 4

Also super-tax on £2,000 (£5,000 assessed
1910-11 - £3,000) at 6d.

50 0 0

£341 13 4

For 1912-13 (if no claim) he would pay on

£4,000 $\left(\frac{-3,001 + 7,500 + 7,500}{3}\right)$ at 1s. 2d. £233 6 8

(But again no super-tax.)

For 1912-13 (if claim made) he would pay on

£5,000 $\left(\frac{\text{Nil} + 7,500 + 7,500}{3}\right)$ at 1s. 2d. .. £291 13 4

And super-tax on £2,000

50 0 0

£341 13 4

For 1913-14 (if no claim) he would pay on

£7,500 at 1s. 2d. £437 10 0

(But no super-tax.)

For 1913-14 (if claim made) he would pay

on £7,500 at 1s. 2d. £437 10 0

Also super-tax on £2,000

50 0 0

£487 10 0

Act of 1890.

Claim in
relation to
future returns.

So that the net result is—

		Claim made.		No claim made.
1909-10	...	£375 0 0	...	£550 0 0
1910-11	...	291 13 4	...	345 16 8
1911-12	...	341 13 4	...	233 6 8
1912-13	...	341 13 4	...	233 6 8
1913-14	...	487 10 0	...	437 10 0
		£1,837 10 0		£1,800 0 0

In the case of a new business the profits of the first year come in as follows:—

1st year	..	Profit of 1st year	
2nd year	..	..	1st year
3rd year	..	..	$\frac{1st\ year}{2} + \frac{2nd\ year}{2}$
4th year	..	..	$\frac{1st\ year}{3} + \frac{2nd\ year}{3} + \frac{3rd\ year}{3}$

It would therefore be desirable to claim for a loss in the first year (against taxed income, assuming the assessment had been held over pending results; against amount paid on if it had been assessed), since the loss would only be in average $\frac{1}{2}$ and $\frac{1}{3} = \frac{2}{3}$, there being nothing to pay on in the second year in either case.

A claim should also be made if there is a likelihood of the business being discontinued, as the result of a business discontinued cannot be brought into future averages.

A somewhat anomalous position arises in the case of financial, insurance, and similar companies.

For the purpose of a *return* for assessment, all taxed income is eliminated, the same account was applicable to a claim under the 133rd section before it was repealed, and it would seem natural to suppose that the same principle would operate for a claim under this Act (1890). Thus, assume the result of a given year to be a profit of £170,000, after crediting income taxed at the source (£200,000) one might naturally suppose it could be said that this was a statutory *loss*, for income tax purposes, of £30,000, and that consequently there was a claim for repayment on the £30,000. But the Revenue claim that there is not a *loss*. There is a profit of £170,000, and there cannot be any claim. This is especially hard on trust companies, who (probably) have most of their income taxed at the source, and are thus deprived of any chance of setting off a great part of their office expenses, salaries, &c.

**Act of 1890.
Financial
company and
tax-paid
interest.**

The position taken up seems inconsistent. Surely an account is not to be drawn one way for one purpose and another way for another?

The point came before the Court in *Rex v. Commissioners of Income Tax for the City of London; ex parte Commissioners of Inland Revenue*, where a claim under this Act (1890) had been submitted by The Exploration Company, Lim., for repayment of income tax on £12,335, made up as follows:—

**Rex v. Com-
missioners of
Income Tax.
Profit not
equal to
taxed interest.**

Act of 1890.

Dr. PROFIT AND LOSS ACCOUNT, Year 1902. Cr.

Rex v. Commissioners of Income Tax.**Profit not equal to taxed interest.**

£ s d			£ s d		
To Expenses	28,948	14 10	By Dividends	39,270	7 4
			Less Tax	2,359	0 9
Balance Profit	69,560	1 9	Other Credits	36,911	6 7
	<u>£98,508</u>	<u>16 7</u>		<u>61,597</u>	<u>10 0</u>
				<u>£98,508</u>	<u>16 7</u>
£ s d			£ s d		
To Loss sustained on sale of shares in 1902, but which had been provided for in the accounts of the company in previous years..	44,983	9 4	By Balance	69,560	1 9
Balance	<u>24,576</u>	<u>12 5</u>			
	<u>£69,560</u>	<u>1 9</u>		<u>£69,560</u>	<u>1 9</u>
£ s d			£ s d		
To amount written back, viz., Income taxed at source..	36,911	6 7	By Balance	24,576	12 5
			Balance, Loss for Income Tax purposes	12,334	14 2
	<u>£36,911</u>	<u>6 7</u>		<u>£36,911</u>	<u>6 7</u>

The Surveyor contended that the result of the trading was a *profit* of £24,576, not a *loss* of £12,335, and that the application was in respect of a loss on part only of a trade or business, and not within this Act.

[In arguing the case before the Commissioners, counsel had quoted a case of *Cause (Surveyor of Taxes) v. Dunlop Pneumatic Tyre Co., Lim.*, in which the Crown had at first contended that such an amount as the £44,983 was not deductible, but had afterwards abandoned their appeal.]

The Exploration Company had in previous years made similar losses, and, as a matter of fact, had not been assessed to income tax, Schedule D, for 1902.

The Commissioners issued a certificate for repayment of tax on the £12,335, and the Crown claimed that the certificate was given without jurisdiction, there being no loss within the meaning of the section. A rule *nisi* had been granted for a writ of certiorari to bring up the certificate, and application was made for the rule to be discharged.

Act of 1890.

Rex v. Commissioners of Income Tax.

Commissioners allowed claim for repayment.

The Court discharged the rule (17th May 1904). Lord Alverstone, C.J., said the Commissioners had three things to consider : (1) the aggregate amount of income ; (2) whether a loss had been sustained from one or more of the undertakings, &c., carried on ; and (3) if so, what was the proper adjustment of the liability. Therefore the Commissioners had to consider not merely the question whether a loss had occurred in the course of a business which would give rise to a reduction on the amount on which Schedule D was payable, but “ has “ there been a loss which would render it right that a man “ should not pay more than on the total income on which he “ ought to pay, because he is allowed under this section to “ have one set off against the other.” He was satisfied that that was the question which the Commissioners had considered—if he had been satisfied otherwise, he would not have hesitated to make the rule absolute. Possibly, from the point of view of the Crown, they had answered that question improperly, either in law or in fact ; but, even if that were the case, the Court could not interfere—if the Commissioners had been considering the right question, their decision was final. He was not, however, satisfied that they had gone wrong in any way in dealing with the matter. Wills and

Judgment of Court.

Decision of Com-
missioners final.

**Act of 1890.
Decision of Com-
missioners final.**

Kennedy, JJ., gave judgment to the same effect, but both declined to express any opinion upon the actual decision of the Commissioners, as they considered the point did not arise.

The Commissioners of Inland Revenue have not accepted this ruling (except as to repayment in the particular case and for that particular year), and they oppose all such applications. It will be gathered from the judgment that the decision of General Commissioners in each case (whether for or against the Crown) is binding.

**Edinburgh
Life Insurance
Co. refused
allowance.**

A similar application for relief was made by the Edinburgh Life Insurance Co. for the year 1903-4, but it was refused by the Commissioners.

**Company
owning all
shares of
another.**

The same point arises where one company, the whole of the shares in which are held by another company, makes a loss. Applying the principle enunciated above, it might be said that if it was the parent company which made the loss there was yet a profit on the whole, and if it was the subsidiary company, that it was a distinct entity, and there was not any taxed income against which to set the loss. It is, however, the practice to allow such set-off where the two companies are practically one. Unless, however, this is so, however overpowering the interest in the parent company may be, such set-off cannot be allowed. This will be understood when it is remembered that, after a claim under this Act, the loss cannot be used again in average, for to allow the parent company to use their share of the loss would prejudice the other shareholders in the subsidiary company.

The effect of sub-sec. 4 is that, in taking an average for any subsequent year, the year in respect of which the tax has been recovered is to be regarded as having resulted neither in a profit nor a loss, thus :—

Act of 1890.
Method of
computing
profits in
subsequent
years after
claim under
the Act of 1890.

Year 1905	...	...	...	...	Profit...	£1,000
,, 1906	...	...	...	...	,, ...	500
,, 1907	Loss £500—tax recovered under this Act, and the result of the year's trading must therefore be taken as					Nil
						3) 1,500
					Average	<u>£500</u>

Some misapprehension prevails as to the proper treatment of depreciation in connection with claims under this Act, and some Surveyors have refused to allow depreciation to create or increase a loss. This, however, is incorrect. The proper method is to allow the depreciation in the claim, but for future averages to call the result of that year *a profit equal to the depreciation so allowed*, instead of *nil*. The following figures illustrate the application of the principle :—

Treatment of
wear and tear
in connection
with appeal
under Act of
1890.

Profit, Year 1904 before depreciation	...	...	£10,000
,, , 1905 ,,	,,	...	12,000
,, , 1906 ,,	,,	...	8,000
			3) 30,000
Average			<u>10,000</u>
Depreciation allowed	...	...	5,000
Assessment, 1907-8	...	...	<u>£5,000</u>

Act of 1890.

Treatment of wear and tear in connection with appeal under Act of 1890.

The actual profit of 1907 before depreciation is found to be £2,000. The loss is therefore £3,000, and this may be set-off against other taxed income.

For 1908-9, &c., the result of the year 1907 must now be called a *profit* of £5,000 (£8,000 less £3,000 on which tax has been repaid).

The reason is obvious. The practice for assessment being to deduct the allowance for depreciation *after the average has been ascertained*, the result of 1907 is only *nil after deducting depreciation*, and therefore that depreciation must be written back to bring all the years on to the same basis.

Sch. A assessment may be added to increase loss.

It is the practice in claims under this Act by an owner-occupier to allow the amount of the Schedule assessment to be added to increase the loss as if it were a *rent*.

Grimes v. Letham.

Effect of 1890 Act.

In *Grimes v. Letham* (Queen's Bench Division, 28th April 1898) a commercial traveller claimed to deduct from his salary a loss incurred by him in connection with the production of a railway signal. The Surveyor contended that such a deduction was not allowable even under sec. 23 of the Act of 1890, as the loss was one of capital, since the appellant did not occupy any premises for manufacture, &c., but appeared to be merely endeavouring to dispose of the patent invention, of which no sale had taken place.

The Court considered that there was nothing shown on the case upon which any relief could be claimed other than under the Act of 1890, and notice of such claim had not been given

within the prescribed time (six months) to bring it under that Act. Without so *deciding*, Wright, J., expressed the *opinion* that, having regard to sec. 159 of the old Act (see p. 297), sec. 23 of the Act of 1890 possibly ought to be held to have the wide effect sought for, if properly invoked.

Act of 1890.
Grimes v.
Letham.
Effect of
1890 Act.

It is clear that the Act applies equally to “companies,” since by sec. 192 of the Act of 1842 “person” includes “bodies corporate.”

It has been contended that after a claim under the 1890 Act the business is to be treated as a *new one* for the three following years. It is quite clear, however, that there is not anything in the Acts to justify this view, and that it is unsound.

CHAPTER VII.

RATE OF DEDUCTION OF TAX ON PAYMENT OF ANNUITIES, DIVIDENDS, INTEREST, ETC.

**Doubt
prevailing as
to rate of
deduction.**

AS some doubt seems to prevail as to the rate at which tax should be deducted from dividends, &c., accruing over a period during which there has been a change in the rate of the tax, it may be well to point out the sections of the Acts governing such deduction.

1853, sec. 40.

By sec. 40 of the Act of 1853 (set out in full on p. 269) it was provided that every person liable to the payment of any rent, interest, annuity, &c., either as a charge on any property, or as a personal debt by virtue of any contract, was entitled to deduct "the amount of the rate of duty which at the time when such payment becomes due shall be payable."

1864, sec. 15.

By the Customs and Inland Revenue Act 1864, sec. 15, however, it is enacted that such person shall be entitled to deduct

"the amount of the rate, or a proportionate amount of the several rates of income tax which were chargeable by law upon or in respect of such rent, interest, annuity, or other annual payment, or the source thereof, during the period through which the same was accruing due."

With respect, however, to dividends of the public funds, &c., and dividends payable out of any public revenue and paid by the Bank of England, these are chargeable under Schedule C. In these cases the Bank is required (1842, secs. 89 and 93) to retain "the amount of duty chargeable . . . at the rate before directed" (this is the rate in force for the current year). A similar provision is contained in sec. 96 as to annuities, dividends, &c., payable out of the public revenue of any Colony, &c., and entrusted for payment to any person other than the Bank of England. The later Act of 1842 (5 & 6 Vict., cap. 80) extends the same rule to annuities, dividends, &c., payable out of the revenue of any foreign State (chargeable under Schedule C). This was extended by sec. 10 of the Act of 1853 to the dividends of foreign companies (when it was provided that such dividends were to be charged under Schedule D, see p. 40), and by an Act of 1861 the rule was further extended to include the dividends, &c., in respect of the stocks and shares of Colonial companies, and by the Revenue Act 1868 (31 & 32 Vict., cap. 28), to annuities, &c., payable out of any of the funds of any institution in India.

**Dividends
of public
funds, &c.**

**Dividends
out of
revenue of
colonies,**

foreign states,

**and foreign
and colonial
companies.**

The tax on interest on exchequer bills is chargeable at the rates in force during the period the bills run (Income Tax Act 1854, 17 & 18 Vict., cap. 24).

Finally, the Customs and Inland Revenue Act 1888 provides (p. 305) that on the payment of any interest, &c., *not payable out of profits brought into charge*, the person paying

1888, sec. 24.

1888, sec. 24.

the same shall deduct the rate of income tax "in force at the time of such payment."

Circular of
Board of
Inland
Revenue.

The substance of a circular issued by the Board of Inland Revenue in May 1909 (the rate of tax having been changed from 1s. for the year 1908-9 to 1s. 2d. for the year 1909-10) is as follows:—

MEMORANDUM AS TO DEDUCTION OF INCOME TAX FOR THE
YEAR 1909-10.

Income tax is deductible at the rate of 1s. 2d. in the pound, in respect of—

(a) Dividends and interest from the public funds payable on or after April 6 1909.

(b) Dividends and interest of foreign or Colonial Government securities, or of foreign or colonial companies entrusted to an agent in this country for payment here on or after April 6 1909; also of like dividends or interest which, although not entrusted to an agent in this country for payment, are realised in the United Kingdom on or after that date through bankers, coupon dealers, or other persons.

(c) Interest and annuities paid by municipal corporations or other local authorities to creditors on rates.

(d) Interest and annuities not paid or not wholly paid out of profits and gains brought into charge to income tax.

But in respect of—

(a) Ground rents, &c., secured on property charged with income tax.

(b) Interest or annuities wholly payable out of property profits or gains charged with income tax.

(c) Dividends paid out of the profits or gains of public companies in the United Kingdom,

the tax is deductible at the rate or rates in force during the period in which the same has or have been accruing—*i.e.*, in respect of any portion which accrued in the year ended April 5 1909, at the rate of 1s. in the pound, and in respect of any portion accruing subsequent to that date at the rate of 1s. 2d. in the pound.

Inland Revenue, Somerset House, London, May 1909.

(Such a circular is generally issued when there is a change in the rate of tax.)

The Board of Inland Revenue, in reply to an inquiry some years ago, stated that a municipal corporation is not in the same position as a railway company; that in the case of a railway the charge of income tax is upon the profits and gains of the undertaking, without any allowance on account of annual interest payable out of such profits or gains, and there is not any separate charge and assessment of income tax on that interest; but that the company, who would have to pay the tax at the rate of 6d. for the first quarter of the year, and 7d. for the second quarter, would deduct, on payment of the interest, a combination of those rates, or (say) 6½d., by virtue of sec. 15 of the Act of 1864; that in the case of the payment of interest by a municipal corporation to creditors on rates, the interest is itself the subject of a charge and assessment, as rates are not chargeable as profits; and the charge is at "the rate of income tax in force at the time of such payment," according to the clear and express provision contained in sub-sec. 3 of sec. 24 of the Customs and Inland Revenue Act 1888. The Board further stated that there is not any provision in the Income Tax Acts which authorises the corporation to reimburse themselves where deduction has been for a less amount than should have been made.

Municipal corporations and tax on interest payable.

It may then be said that—

Interest, &c., under Schedule C (*i.e.*, payable out of the revenue of the United Kingdom or any Colony or foreign State) is liable to deduction of tax at the rate in force when the dividend is paid.

Summary.

Summary.

Interest, &c., under Schedule D is liable in the same manner if not paid out of profits brought into charge, but to an apportioned rate if paid out of profits, *e.g.*, the interest, &c., due from a foreign company is liable to deduction at the rate in force when the dividend is paid, such interest being payable out of profits *not* brought into charge; but dividends and interest, &c., payable by British companies, whether chargeable under Case I. or Case IV., are liable to deduction at an apportioned rate.

In reply to a recent inquiry, the Board of Inland Revenue stated that the Grand Trunk Railway Company of Canada was considered as a Colonial company (Act of 1861), and that tax on their dividends should therefore be deducted at the rate in force *when the payment was made*.

**Rev. Act 1911,
sec. 14.**

Sec. 14 of the Revenue Act 1911 deals with the question of the recovery of tax which could not be deducted at the time of payment, viz. :—

(1) Where in any income tax year any half-yearly or quarterly payments have been made on account of any dividend, interest, or other annual profits or gains, previously to the passing of the Act imposing the tax for that year, and income tax has not been charged thereon or deducted therefrom, or has not been charged thereon or deducted therefrom at the rate ultimately charged for the said year, the amount not so charged or deducted shall be charged under Schedule D in respect of those payments as profits or gains not charged by virtue of any other schedule, in accordance with the provisions contained in the sixth case of Schedule D in section 100 of the Income Tax Act 1842, and the agents entrusted with the payment of the dividends, interest, or other annual profits or gains shall furnish a list containing the names and addresses of the persons

to whom payments have been made, and the amount of those payments, to the Commissioners of Inland Revenue, upon a requisition made by the Commissioners in that behalf.

Rev. Act. 1911,
sec. 14.

(2) Any person liable to pay any rent, interest, or annuity, or to make any other annual payment, shall be authorised to make any deduction on account of income tax for any income tax year which he has failed to make previously to the passing of the Act imposing the tax for that year, or to make up any deficiency in any such deduction which has been so made on the occasion of the next payment of the rent, interest, or annuity, or making of the other annual payment after the passing of the Act so imposing the tax, in addition to any other deduction which he may be by law authorised to make, and shall also be entitled, if there is no future payment from which the deduction may be made, to recover the sum which might have been deducted as if it were a debt due from the person as against whom the deduction could originally have been made if the Act imposing income tax for the year had been in force.

(3) In this section the expression "income tax year" means the year beginning the 6th day of April.

CHAPTER VIII.

EXEMPTIONS AND ABATEMENTS.

PART I.—*General.*

Claim may
be made for
three years.

CLAIMS for repayment of tax on the ground that the person is entitled to exemption or abatement may be made for three years past.

The sections of the Acts relating to exemptions and abatements are as follows :—

Act of 1853,
sec. 163.

Act of 1842, sec. 163—

“ . . . Any person charged or chargeable to the duties granted by this Act, either by assessment, or by way of deduction from any rent, annuity, interest, or other annual payment to which he may be entitled, who shall prove before the Commissioners for General Purposes, in the manner hereinafter mentioned, that the aggregate annual amount of his income, estimated according to the several rules and directions of this Act, is less than *one hundred and fifty pounds, shall be exempted from the said duties, and shall be entitled to be repaid the amount of all deductions or payments on account thereof, in the manner hereinafter directed, except so much of such duties as the person claiming such exemption shall, or may be entitled to, charge against any other person, or to

*This exemption was limited by sec. 28 of the Act of 1853 to incomes less than £100, but was restored to £150 in 1876. Now, however, see the Act of 1898.

deduct or retain from, or out of any payment to which such claimant may be or become liable; and such exemption shall be claimed and proved, and the proceedings thereupon shall be had before the Commissioners for General Purposes in the district where the claimant shall reside, pursuant to and under the powers and provisions by which the duties in Schedule D are herein directed to be ascertained and charged, but, nevertheless, subject to the rules and directions hereinafter contained."

Act of 1876, sec. 8—

Act of 1876,
sec. 8.

"The exemption granted by the Act of the fifth and sixth years of Her Majesty's reign, chapter thirty-five, to persons whose respective incomes are less than one hundred and fifty pounds a year, is hereby restored, and in lieu of the relief granted by sec. 12 of 'The Customs and Inland Revenue Act 1872,' to a person whose income, although amounting to one hundred pounds or upwards, is less than three hundred pounds, the following relief or abatement shall be given or made to a person whose income is less than four hundred pounds—that is to say, any person who shall be assessed or charged to any of the duties of income tax granted by this Act, or who shall have paid the same either by deduction or otherwise, and who shall claim and prove in the manner prescribed by the Acts relating to income tax that his total income from all sources, although amounting to one hundred and fifty pounds or upwards, is less than four hundred pounds, shall be entitled to be relieved from so much of the said duties assessed upon or paid by him as an assessment or charge of the said duties upon one hundred and twenty pounds of his income would amount unto, and the relief shall be given either by reduction or abatement of the assessment upon such person, or by the repayment to him of so much of the excess as he shall have paid, or by both of those means, as the case may require."

Act of 1894, sec. 34 (1) (now obsolete), but which raised the exemption limit to £160 and granted an abatement to incomes not exceeding £500

Act of 1894,
sec. 34.

Sub-section (2), relating to married women, is quoted later on in this chapter.

Act of 1898,
sec. 8.

Act of 1898, sec. 8—

“(1) Any individual who having been assessed or charged to income tax or having paid income tax either by deduction or otherwise claims and proves in manner prescribed by the Income Tax Acts that his total income from all sources, although exceeding one hundred and sixty pounds, does not exceed seven hundred pounds, shall be entitled to relief from income tax equal—

“(a) If his total income does not exceed four hundred pounds, to the amount of the income tax upon one hundred and sixty pounds; and

“(b) If his total income exceeds four hundred pounds and does not exceed five hundred pounds, to the amount of the income tax upon one hundred and fifty pounds; and

“(c) If his total income exceeds five hundred pounds and does not exceed six hundred pounds to the amount of the income tax upon one hundred and twenty pounds; and

“(d) If his total income exceeds six hundred pounds and does not exceed seven hundred pounds, to the amount of the income tax upon seventy pounds;

and such relief shall be given either by reduction of the assessment or by repayment of the excess which has been paid, or by both of those means, as the case may require.”

Fraudulent
claims for
exemption, &c.

Sec. 166 of the Act of 1842 provides that :—

“If any person shall be guilty of any fraud or connivance in making any such claim, or in obtaining any such exemption or any such certificate as aforesaid, or shall fraudulently conceal or untruly declare any income or amount of income, or any sum which he may have charged, or been entitled under the authority of this Act to charge against any other person, or which he may have deducted or retained, or have been or be entitled as aforesaid to deduct or retain, from or out of any payment to which such person claiming exemption as aforesaid may be or become liable, or if any such person shall fraudulently make a second claim for the same cause, every such person so offending in any of the cases aforesaid shall forfeit the sum of £20, and treble the duty chargeable in

respect of all the sources of his income, and as if such claim had not been allowed; and if any person shall knowingly and wilfully aid, abet, or assist any such person in committing any such fraud as aforesaid, the person so aiding, abetting, or assisting shall forfeit the sum of £50."

By sec. 28 of the Act of 1853 this section is extended to apply to false claims for abatement.

In the case of *Lord Advocate v. McLaren* (Court of Session, Scotland, 7th March and 18th July 1905) action was taken under this section against McLaren for making such a false claim. His income arose partly from business and partly from interest, &c., taxed at the source, and it was sought to charge £20 and treble the duty on the *whole income*.

*Lord
Advocate v.
McLaren.*

In the Court of first instance the Lord Ordinary pointed out that the section spoke of "fraudulently" *concealing* but only "untruly" *declaring*, and it was not therefore necessary to decide whether the conduct of McLaren was morally culpable or not, as he had in any event incurred the penalty by (at least) inexcusable carelessness. He further considered that sec. 178, which struck not only at falsehood and fraud but also against "wilful neglect," helped to the interpretation of the general policy of the statute.

As to the amount of the penalty, £20 for each offence (two claims) was clearly due, but the treble duty could not be on *all the sources* of income, because income which had paid duty already could not be "chargeable." He considered that the section clearly meant treble duty on the income on which duty was still chargeable. This view also, he stated, was

**Amount of
penalty.**

DD

Amount of
penalty.

supported by sec. 178, that in case of fraudulent concealment, &c. :—

“Every person shall, on proof thereof . . . be charged and assessed treble the amount of the charge which ought to have been made on such person if no such charge shall have been made; and if any such charge shall have been made which shall be less than the charge which ought to have been made on such person, then such person shall be assessed and charged, over and above such former charge, treble the amount of the difference between the sum with which such person shall have been charged and the sum with which he ought to have been charged, to be added to such assessment. . . .”

On appeal, however, it was held (Lord Adam, Lord Kinnear, and the Lord President) that the penalty extended to treble duty on the *whole* income. The fact of the declaration not having been acted upon did not exonerate—the penalty was for the untrue declaration, irrespective of result. The Lord Ordinary had considered it competent to the Court to modify the penalty (if exigible) under sec. 23 of the 6th of Queen Anne, c. 53, but they did not think that Act referred to penalties such as this at all. This penalty was absolutely fixed by statute, and the Court had no power to alter it.

Facilities
granted in
1876-7

It was during the year 1876-7 that, for the first time, facilities were given to persons desirous of claiming exemption or abatement, by providing a form of claim in the form of return itself, instead of leaving persons to apply specially to the Assessor or Surveyor for a form, after making the return of income, as had been the previous practice.

It will be seen from the sections quoted above that a person whose total income from all sources does not exceed £160 per annum is exempt from tax, and if he has paid tax by way of deduction, or otherwise, on the whole or any part of it, he is entitled to have it repaid to him.

Persons entitled to exemption or abatement.

Also where the total income of a person

Abatements.

Exceeds £160 but does not exceed £400, he is entitled to an abatement of £160.

Exceeds £400 but does not exceed £500, he is entitled to an abatement of £150.

Exceeds £500 but does not exceed £600, he is entitled to an abatement of £120.

Exceeds £600 but does not exceed £700, he is entitled to an abatement of £70.

In order to claim the exemption or abatements, and avoid paying tax and then claiming it back (in cases where the income has to be returned for assessment and is not taxed at the source), the declaration in the Form (No. 9 or 11) must be filled up and signed. In the case of a partnership, the partners may claim to be treated separately for the purpose of claiming such exemption or abatement (1907, sec. 20, also 1842, sec. 168). In such case the Form of Return No. 11 should be filled up precisely as in other cases, and each person claiming abatement or exemption should fill up and sign Form No. 38 (see Chapter IX.), and these should accompany the Form of Return.

Mode of claiming before payment of tax.

Partners may be treated separately.

Filling up the form of return, &c.

Where
one partner
receives a
salary.

Previous to 1907, partners claiming abatement, &c., were assessed separately. Since 1907 this is not so. They are “treated” separately (sec. 20, 1907), thus producing the same result in respect thereof, but the *assessment* is made on the firm. This seems to introduce needless complications. The claims are examined, and each is “treated” separately, and they are then lumped together and an assessment is made on the firm. If we are correctly informed, this arose because of certain difficulty in collecting the tax from individual partners. If this be so, we would suggest that a simpler method would be to assess separately and provide that tax should none the less be *recoverable* (if necessary) from the firm.

The following is the simplest illustration of the incidence of the tax as between partners :—

Assessable profit of A. and B. (say average profits of 1907, 1908, and 1909), £906, after adding back £100 for salary for Mr. A.

For income tax purposes for 1910-11 :—

A. should pay on £100 + half-balance	...	£503
B. ,, ,, ,,	...	403
		£906

A being entitled to an abatement of £120 and B. of £150.

In connection with relief to earned incomes (see Part III. of this chapter) the Finance Act, 1907, sec. 20, provides :—

Where one partner receives a salary.

“Where an individual carrying on or exercising any profession, trade, or vocation in partnership with any other person makes any claim for exemption, relief, or abatement under the Income Tax Acts, the income of the individual from the partnership for the year to which the claim relates may be treated separately for the purpose of any such exemption, relief, or abatement, and if so treated shall be deemed to be the share to which he is entitled during the said year in the partnership profits, such profits being estimated according to the several rules and directions of those Acts.”

It has been suggested that this is new, but it appears to us that it is simply placing on the statute book a practice which has been in existence as long as we can remember. Assume a case where the profit has been divided equally up to 31st March 1910, but becomes A. $\frac{2}{3}$ rds, B. $\frac{1}{3}$ rd as from that date. The income for the year of assessment is to be divided on the basis of $\frac{2}{3}$ rds and $\frac{1}{3}$ rd, though the *amount of it* is arrived at on the basis of three years when the shares were different. This principle we have invariably applied in practice.

In the case before us the net result is :—

	A.	B.
Salary	£100	
Net profit (£806)	537	£269
	<u>£637</u>	<u>£269</u>

and A. is only entitled to an abatement of £70 and B. to one of £160.

Incidence of
tax as between
partners
where
partnership
interest has
varied.

Now let us assume profits as follows :—

Year ended 31st March.			
1908. 1909. 1910.			
£ £ £			
Net profit	10,000	11,000	12,000
A.'s interest	1,100	1,200	1,300
B.'s ,, ...	1,300	1,500	1,400
	<u>£12,400</u>	<u>£13,700</u>	<u>£14,700</u>

(Average, £13,600.)

Filling up the
form of
return, &c.

and that A. has $\frac{1}{4}$ th share and B. $\frac{3}{4}$ ths. The shares in our opinion are :—

	A.	B.
Interest for the year (using the last		
interest as near as possible) ...	£1,300	£1,400
Profit (£13,600—£2,700) ...	2,725	8,175
	<u>£4,025</u>	<u>£9,575</u>

The point, of course, is how to deal with the interest, viz., whether to take it on the average, on the previous year, or on the current year. We favour the *last* alternative, and we use the interest on capital as standing at 31st March 1910 as the best estimate possible for the current year—on the same principle as we use the machinery figure for depreciation purposes. We feel no doubt that this method is the proper way of arriving at a share of profits for the purpose of Section 20 of the Act of 1907—though conscious that this would involve an adjustment every year, but where there was

no material difference no notice would be taken. Again, no difficulty would usually arise if any of the three methods were consistently followed, but looking at it from the point of view of an interpretation of the *legally correct* method, and taking an exaggerated case, suppose it were *known* that the business had permitted B. to withdraw *all* his capital on 1st April 1910, then the division should be :—

Filling up the form of return, &c.

	A.	B.
Interest	£1,300	
Profit (£13,600—£1,300) ...	3,075	£9,225
	<u>£4,375</u>	<u>£9,225</u>

This abatement, &c., does not apply in the case of a limited company, which is assessable. however small its profit, the remedy being for the individual shareholders to claim repayment—if entitled to it.

No abatement, &c., in case of a company.

The point was before the Courts in two cases. In the Court of Session, Scotland, in *Curtis v. Old Monkland Conservative Association* (22nd November 1904), the club sought exemption from income tax, Schedule A, on the ground that its total income from all sources did not exceed £160. Reliance was placed on sec. 40 of the Act of 1842, viz., that—

Curtis v. Old Monkland Conservative Association.

“All bodies politic, corporate, or collegiate, companies, fraternities, fellowships, or societies of persons, whether corporate or not corporate, shall be chargeable with such and the like duties as any person will under and by virtue of this Act be chargeable with.”

*Curtis v.
Old Monkland
Conservative
Association.*

And also on sec. 192, providing that—

“Wherever in this Act, with reference to any person, matter, or thing, any word or words is or are used importing the singular number, or the masculine gender only, yet such word or words shall be understood to include several persons as well as one person, females as well as males, bodies politic or corporate as well as individuals, and several matters or things as well as one matter or thing, unless it be otherwise specially provided, or there be something in the subject or context repugnant to such construction.”

Also on the Interpretation Act, 1889, sec. 19, that—

“In this Act, and in every Act passed after the commencement of this Act, the expression ‘person’ shall, unless the contrary interpretation appears, include any bodies of persons, corporate or incorporate.”

On behalf of the Crown it was urged that the wording of sec. 163 (p. 398) was repugnant to such a construction, and that the association was not a “body politic or corporate.”

The Court of Session allowed the exemption.

The case was then carried to the House of Lords, 11th and 19th December 1905, where the decision was overruled and judgment given for the Crown.

*Mylam v.
The Market
Harborough
Advertiser
Co., Lim.*

In *Mylam v. The Market Harborough Advertiser Co., Lim.* (King’s Bench Division, 19th January 1905), the company similarly sought exemption from assessment to Schedules A and D, on the ground that their total income did not exceed £160. The argument was substantially the same as in the *Old Monkland* case; but the Crown further argued that, in any event, sec. 163 excepts from exemption so much of the tax as the company should or might be entitled to deduct or retain from dividends.

Phillimore, J., held that the company was not entitled to the exemption claimed. He did not rely on the interpretation to be put upon the word "person," and did not desire to express any opinion as to whether the company was a "person," but assuming that it was a "person," it was not entitled to exemption because it was bound (*sic*) to deduct income tax from its dividends.

Mylam v. The Market Harborough Advertiser Co., Ltd.

By the Finance Act 1904, sec. 8, it is provided that—

Unregistered Friendly Societies.

"Whereas doubts have arisen whether unregistered friendly societies are entitled to the exemption from income tax given under the Acts relating to income tax to persons whose income does not exceed £160, be it enacted that an unregistered friendly society whose income does not exceed £160 is entitled to that exemption."

It is frequently overlooked that in all cases regard is to be had to the share of income payable *to each person participating in it*, and not to the gross amount of that income.

Regard to be had to interest of each person.

Take the case of a large trust estate, where the income may be some thousands a year. It frequently happens that some, if not all, of the beneficiaries receive less than £400 or £500, &c., per annum, some, possibly, receiving less than £160. Probably the whole of the income is taxed at its source, so the only remedy is to recover the tax. In such cases each person must claim separately, and must give an account of his total income from all sources.

Case of trust estate.

Previous to the Act of 1894 the income of a married woman residing with her husband was deemed to be his income for

Married women.

income tax purposes (1842, sec. 45), and any claim for exemption or abatement in respect thereof had to be made by him.

Act of 1897.

By the Finance Act 1897 (repealing a similar section of the Act of 1894) it is provided :—

“Sec. 5.—(1) Where the total joint income of a husband and wife charged to income tax by way either of assessment or deduction does not exceed £500, and upon a claim for exemption, relief, or abatement, under the Acts relating to the income tax, the Commissioners for the general purposes of those Acts are satisfied that such total income includes profits of the wife from any business carried on or exercised by means of her own personal labour, and that the rest of the total income, or any part thereof, arises or accrues from profits of a business carried on or exercised by means of the husband's own personal labour, and unconnected with the business of the wife, they shall deal with such claim as if it were a claim in respect of the said profits of the wife, and a separate claim on the part of the husband in respect of the rest of the total income, but they shall deal with any income of the husband arising or accruing from the business of his wife, or from any source connected therewith, as if it were part of the income of the wife.

“(2) In this section ‘business’ means any profession, trade, employment, or vocation, or any office or employment of profit, and the ‘profits of a business’ mean any profits, gains, or remuneration arising or accruing from the business, and chargeable under Schedule D or Schedule E in the Income Tax Act 1853.”

The exact effect of these sections is further dealt with later on in the Chapter.

**Income
derived from
salary only.**

A few illustrations of cases where exemption or abatement may be claimed may be useful, *e.g.* :—

A. is a salesman in a warehouse, his salary being as follows :—

**Income
derived from
salary only.**

Year ending 31st Dec. 1904	£150	}	}	£330	Average	£165
1905	180					
1906	210	}	}	540	„	180
1907	240			630	„	210
1908	270	}	}	720	„	240
1909	300			810	„	270
1910	330	}	}	900	„	300

His income for income tax purposes will be computed on an average of past years (1853, sec. 48) :—

For the Income Tax	}	1906 based on salary for the year 1904	£150
year ending 5th April		1907 based on average salary for 1904 & 1905	165
		1908 „ „ „ 1904-05-06	180
		1909 „ „ „ 1905-06-07	210
		1910 „ „ „ 1906-07-08	240
		1911 „ „ „ 1907-08-09	270
		1912 „ „ „ 1908-09-10	300

Thus, for the income tax year ended 5th April 1906 he would have been entitled to exemption, his income not having exceeded £160. In each subsequent year he was entitled to an abatement of £160 off the respective averages of £165, £180, &c. If, in any subsequent year, his income (arrived at in like manner) exceeds £400, but *does not exceed* £500, he will be entitled to an abatement of £150, instead of £160, and so on.

**Amount of
abatements
that may be
claimed.**

In all these cases he will have a form of return sent to him to fill up. He should fill in the figure on page 2, and also complete the “ Notice and Declaration ” on page 3, and

**Filling up
the return.**

**Employer to
return names
of assistants
and their
salaries.**

he will not have any difficulty in obtaining the abatement or exemption, as the case may be. There is, however, one question which might be raised in connection with his return. An employer is bound by sec. 21 of the Finance Act 1907 to make a return of all persons in his employment, and the salaries paid to them, except such as are not liable to the payment of income tax (see *ante* p. 45). His name will probably be furnished to the Surveyor as soon as he commences to receive £160 per annum, though his average salary for the past three years does not amount to that sum. In the absence of a return from him (on the Form No. 11, which will have been forwarded to him) he will be assessed on such a sum as the Commissioners consider will probably represent his income, and he will be left to appeal if he is over-assessed. It is, therefore, important in his own interest that he should make a proper return, and be able to show (if called upon) the basis on which he has made it up.

**Income not
derived
wholly from
salary.**

Let us now take the case of another salesman, B., who receives the same salary, but who has other income, *e.g.*,

Income from railway stock	...	£10 per annum
Net annual value of house property, whether he occupies it himself or not	... ..	24 ..

**Amount to
return for
assessment.**

His statutory income for the year ending 5th April 1908 is—

Salary	... ..	£180
Income from railway stock	... ..	10
Net annual value of house property	...	24
Total	...	<u>£214</u>

He is thus liable to pay tax on £214 less £160, but he has already paid tax on the £10 by way of deduction and on the £24 under Schedule A. He should, therefore, have filled in the figure £180 on page 2 of the return, and completed the "Notice and Declaration" on p. 3, and he would have been assessed on £180 less £160 (*i.e.*, on £20).

Amount to
return for
assessment.

Had his average salary been £100 his income for the year would have been—

Salary	...	...	...	...	£100
Income from railway stock	...	...	...	...	10
Net annual value of house property	...	...	...	...	24
Total	...	...	...	...	<u>£134</u>

And he would have been exempt from tax, his income not having exceeded £160. He would also be entitled to recover the tax paid by way of deduction on the £10, and, under Schedule A, on the £24.

If the income exceeds £400 but does not exceed £500 he is only entitled to an abatement of £150, say,

Salary	...	...	...	...	£440
Income from railway stock	...	...	...	...	40
Net annual value of house property	...	...	...	...	20
The total is	...	...	...	...	<u>£500</u>

And he would be assessed on £290.

**Gross and net
income.**

In cases where the gross income is above £700, but, after the deduction of the one-sixth under Schedule A, it falls below that figure, there is a particular point to be noticed.

To take a case,

Salary	...	...	...	£640
Income from railway stock				40
Gross annual value of house				
property	...	...	£24	
Less one-sixth	...		4	
			<u>20</u>	

£700 net, or £704 gross.

The income for income tax purposes is £700 (not £704), and the person is entitled to the abatement of £70 as his income does not exceed £700.

**Estimate of
income under
Schedule B
for exemption,
&c.**

As to claims for exemption, &c., under Schedule B see *ante* (p. 36).

**Tax deducted
from mortgage
interest, &c.**

To go a step further, suppose the income to be

Salary	...	...	...	...	...	£150
Net annual value of house property	...	...				15
					Total	£165
Less Interest payable on £200 loan at 4 per						
cent.	...	...	...	...	...	8
					Net income	<u>£157</u>

Then the income for income tax purposes is not £165 but £157, and he is entitled to exemption. It must, however, be observed that he cannot recover the whole of the tax on £15

paid under Schedule A, for he has deducted, or ought to have deducted, tax on £8 on payment of the interest. This has been done by him on behalf of the Revenue, and carrying out the principle of taxing income at its source. The amount he may recover will be tax on £15 less £8 (*i.e.*, on £7), and for a subsequent year he may have the assessment discharged except as to the mortgage interest, or at least might where there was no reasonable doubt of his title to exemption continuing. Let us glance at the net result. The person to whom he has paid the £8 has borne tax on it by way of deduction. He himself has paid tax under Schedule A on £15. On the other hand, he has received tax on the £8, so that he is really only out of pocket to the extent of tax on £7, and this he recovers on proving that he is entitled to exemption. If he gets the assessment discharged except as to the £8 the result is the same.

**Tax deducted
from mortgage
interest, &c.**

In most cases, where the individual receives a salary, he is able to obtain the exemption or abatement without paying the tax at all, but in many instances a person's whole income is derived from

**Income
received after
deduction
of tax.**

Government Stocks,
Investments in Public Companies,
Foreign Stocks,
Interest on Mortgage,
Chief Rent,
House Property,

**Filling up
claim for
repayment.**

or some of them. Except in the case of the house property, the income tax will be deducted before the interest, &c., comes to the hands of the recipient, and it thus becomes necessary to make a claim and obtain repayment of it.

It should be borne in mind that any time before the 5th April in any year a claim for exemption on abatement may be made for three years up to the previous 5th April, *i.e.*, any time before the 5th April 1912 a claim may be made for the three income tax years ended 5th April 1907-08-09. After a claim has once been made and allowed, a form is forwarded by the authorities with each order for repayment of tax for the person to claim for the following year.

**Dividend for
one year paid
during next
year.**

In reply to an inquiry the Board of Inland Revenue stated that a dividend paid in May 1899 for the half-year ended 31st December 1898 should be regarded as income for the year 1898-99 (not 1899-1900), "that being the year in which "the company's profit would have been earned and assessed "to income tax." The practice is not, however, uniform, and the principle laid down might, in many cases, be difficult of application.

**First claim to
be forwarded
to Surveyor.**

The first claim, or claims, must be forwarded to the Surveyor for the district. Subsequent claims are to be forwarded, in the case of English claims, direct to Somerset House, and in the case of Scotch or Irish claims to the Comptroller, Inland Revenue, Edinburgh or Dublin respectively.

**Subsequent
claims to
Somerset
House, &c.**

We gave in the Appendix to the fourth edition a letter issued by the Comptroller at Edinburgh at the time when the repayments of income tax in Scotland were transferred from London to Edinburgh.

**First claim to
be forwarded
to Surveyor.**

**Subsequent
claims to
Somerset
House, &c.**

The following forms, with the certificates, will, it is hoped, be of material assistance to any person desirous of making such a claim :—

NO. 40.

INCOME TAX—EXEMPTION CLAIM, 1908-09.

INCOME NOT EXCEEDING £160 FROM ALL SOURCES.

In writing about this claim quote—
Register No.

This form is intended only for an Income Tax Repayment Claim by a Person resident in the United Kingdom.

The following particulars must be furnished by the claimant:—

Full name of claimant *Mary Alice Hodson,*

Repayment by

If a widow, whether
Widow or Spinster.

Widow, to — 191 .

Occupation (if none, state "none.")

None.

Residence *135 New Road, Chorlton-on-Medlock,
Manchester.*

Date of Receipt by Surveyor.

Money Order Office at which } *Spring Gardens, Manchester.*
repayment is desired.

Whether repayment of Income Tax }
has ever been claimed before } No.

If so, when?

**The spaces below must not be written on by
the claimant.**

Class **B**

Period ——— Years to ——— 191 .

Amount.....

£	s	d
---	---	---

E	£	s	d	U	£	s	d
----------	---	---	---	----------	---	---	---

The Declaration on page 3 must be signed.

When filled in, this form is to be sent to the Surveyor of Taxes for the District in which the claimant resides, to whom also application may be made for advice and assistance in filling up the form.

The Name and Address of the Surveyor may be obtained from the Local Collector of Taxes.

NOTE.—If Repayment is to be made to any other person than the claimant, a written authority must be furnished, by letter or otherwise, under the claimant's own hand.

Full instructions for completing the claim are given on page 2.

Examined by

Date ——— 191 .

Countersigned

INSTRUCTIONS.

1.—The Income Tax year ends on the 5th April. No claim for repayment of Income Tax can be admitted unless it be made within three years of the close of the tax year to which it relates.

2.—This form is for the use of a person resident in the United Kingdom. In the absence of special circumstances, temporary residence in the United Kingdom does not confer any title to relief from Income Tax.

3.—The income of a Married Woman living with her husband is deemed by the Income Tax Acts to be his income, and particulars thereof must be included in any statement of income rendered by him for the purposes of a claim to Exemption or Abatement. The only exception to this rule is where a wife earns an income independently of her husband by the exercise of her own personal labour, and the joint income of husband and wife does not exceed £500. In such a case the profit so earned by the wife may be treated as a separate income and a separate claim of Exemption or Abatement may be made in respect thereof.

4.—In filling in the particulars of income on page 3, the Claimant must conform to the following instructions:—

If the income be derived—

(a) From **Lands or Houses**.—State the precise situation of each property, with the name of occupier, and the amount of the annual rent or value, and who bears the cost of repairs. If the Claimant resides in his own house, the annual value thereof must be entered in the statement of income.

(b) From the **Occupation of Land**.—Reckon the income from this source at one-third of the full amount of rent and tithe.

(c) From **Trade, Profession, or Employment**.—State the nature thereof, where carried on, and the particulars of the Assessment, if any.

N.B.—The Collector's receipts for duties paid on income from above sources should be attached to the claim wherever practicable.

(d) From **Dividends on Stocks Inscribed in the books of the Bank of England, Government Annuities and payments received through the Supreme Court Pay Office**.—Certificates showing the Amount of Dividends, Annuities, &c., are not required, but claimants must include the income from these sources in the general statement of income on page 3 of this form, and must, in addition, furnish further particulars as follows:—

Name or Description of Stock or Annuity, and whether the Dividends are paid by post or through Bankers	Name or Names (in due order) in which the Stock or Annuity stands. If the funds are in Court the correct Title of the Cause or Matter must be given, and the title of the account (if any) in the Supreme Court Pay Office books.	Amount of Stock, and if part of larger Sum state also larger Sum	Month and Year when Dividend or Annuity due, from which deduction made
2½% Consols remitted by Post	John Henry Hodson, deceased— Mary Alice Hodson executrix ..	£ s d 400 0 0	5 July, 5 Oct. 1908 5 Jan. 5 Apr. 1909
New Zealand Government 4% Inscribed Stock remitted by post	Ditto	200 0 0	1 May 1908 1 Nov. 1908

(e) From **Dividends or Interest arising from Money Invested in any Stock, Shares, or otherwise** (except in the Stock of the Bank of England, and those mentioned in the preceding clause).—Attach Certificates showing the amount of Dividends or Interest applicable to the period for which the claim is made.

(f) From **Annuities, Interest of Money, Remittances from Abroad, or other property not coming under any of the foregoing heads**.—State fully the particulars, including the name and address of the person by whom paid, and, if taxed before receipt, attach Certificates of deduction of tax, signed by the person who made such deduction.

N.B.—When the Certificates referred to in (e) and (f) are not in the name of the claimant state whether the person or persons in whose name or names the Certificates are given are Trustees or otherwise.

5.—Particulars must be given in space No. 2 of all deductions from the income, such as **ground rent, interest on mortgage or loan (whether secured on property, life insurance policy, reversion or otherwise), interest on unsecured loans, annuities, patent royalties, or other annual payments. If there be none, state "none."**

6.—A claim may be made as soon as the whole of the Income of the Tax year (ending 5th April) has been received.

7.—**Penalties**.—By Sec. 166 of 5 and 6 Vict., cap. 35, the Penalty for a fraudulent claim or untrue declaration is £2s and treble the duty chargeable. By Sec. 94 of the Finance (1909-10) Act, 1910, it is provided that "if any person for the purpose of obtaining any allowance, reduction, rebate, or repayment in respect of any duty under this Act either for himself or for any other person, or in any return made with reference to any duty under this Act, knowingly makes any false statement or false representation, he shall be liable on summary conviction to imprisonment for a term not exceeding six months with hard labour."

DECLARATION OF INCOME.

I declare that I am resident in the United Kingdom, and that the following is a true account of my income from **every source**, whether taxed or not, for the year to 5th April 1909, and I therefore claim to be repaid the sum of £6 19s. 6d.

Signature *M. A. Hodson,*

Date *5th December 1909.*

The Claimant must set forth every source of his Income, with the amount derived from each source, whether Tax has been paid on it or not.

No. 1.—SOURCE OF INCOME.

N.B.—With regard to income received through the Bank of England or from the Supreme Court Pay Office, see Instruction No. 4 (d) opposite

	Annual Amount of Income from each source.	Amount of Income Tax paid on or deducted from each source of Income.
<i>Consols Dividend</i>	£ s d 10 0 0	£ s d 10 0 0
<i>New Zealand Government Dividend</i>	8 0 0	8 0 0
<i>Blankshire Carriage and Tramways Co., 10 A Shares, £15 paid (£150), at 5 per cent., to 28th Feb. paid 24th April, 1909, free of Income Tax</i>	* 3 15 0	3 9
<i>Do. to 31st Aug. paid 24th Oct. 1909 free of Income Tax</i>	15 0 0	15 0
<i>Argentine Government, £1,000 6 per cent. Funding Loan, due 1st Oct. 1908</i>	15 0 0	15 0
<i>Do. do. 1st Jan. 1909</i>	15 0 0	15 0
<i>Do. do. 1st April 1909</i>	15 0 0	15 0
<i>G. H. Lea & Co., 55 Spring Gardens, Manchester, Loan of £200 on Mortgage at 5 per cent. Interest due 1st May 1908</i>	5 0 0	5 0
<i>Do. do. 1st Nov. 1908</i>	5 0 0	5 0
<i>Do. Chief Rent of £80 per annum</i>	10 0 0	10 0
<i>Do. do. 25th Mar. 1909</i>	10 0 0	10 0
<i>House, 135 New Road, C.-on-M., occupied by me, and No. 137 let. Ann. value net</i>	40 0 0	2 0 0
* More strictly £3 18s. 11d. less 3s. 11d. tax (see post).		
Total Amount of Income and Income Tax thereon	£ 155 10 0	7 15 6

[See pp. 422 et seq.]

THE BLANKSHIRE CARRIAGE AND TRAMWAYS COMPANY.

Dividend for half-year ended February 28th 1908.

57 PICCADILLY, BLANKTOWN,

April 24th 1908.

TO EXTX. J. H. HODSON.

MADAM,

Herewith I beg to hand you cheque for £3 15s. od.,
being Dividend for the half-year ended February 28th 1908,
upon the shares (as per particulars below) held by you in this
Company, made payable at The Consolidated Bank, Lim.,
King Street, Blanktown.

Yours obediently,

T. MANSER, *Secretary.*

Description.	Paid up	Number of Shares	Entitled to Dividend	Rate for half year		Amount
	£ s d		£ s d			£ s d
£20 A. shares	15 0 0	10	150 0 0			
£10 B. do.	10 0 0					
£10 C. do.	7 10 0					
			£ 150 0 0	2½%	Free of Income Tax	3 15 0
£7 Pref. do.	..		..	2½% Less	£ : : Inc. Tax	
						<u>£3 15 0</u>

(This portion to be retained by the shareholder)

.....

No. 185A

INCOME TAX.

I hereby certify that Income Tax has been assessed on and paid to the Revenue by the BLANKSHIRE CARRIAGE AND TRAMWAYS Co., in respect of its Profits, and Gains, and that the sum of £3 15s. 0d., being the Dividend payable for the *Half-year* ending on the *28th* day of *February 1908* to *Extr. JNO. HY. HODSON, on 10 A Shares*, £15 paid, is a portion of such Profits and Gains, in respect of which Income Tax has been assessed and paid as aforesaid.

Signature (1) (1) Here let the
Principal or
Secretary sign.

Quality.....

Address

Date.....

No. 189A.

INCOME TAX.

FOREIGN AND COLONIAL SECURITIES.

Certificate for Repayment.

(To be used only by Bankers in the United Kingdom.)

(1) Name of
Banker or
Agent.

We hereby certify that Coupons of the ARGENTINE GOVERNMENT,
as specified at the back hereof, which became due *1st July 1908*
were forwarded by us to (1)
of
on behalf of Extx. JNO. HY. HODSON, and that we received pay-
ment or were credited with the proceeds thereof LESS Income
Tax as follows:—

£	s	d	
15	0	0	Gross amount.
15	0		Tax deducted.
£14	5	0	Net amount.

Signature of Banker }
or Bank Agent }

Residence

Date.....

N.B.—The declaration on the other side to be signed by the
Claimant.

SCHEDULE OF COUPONS.

The number of Coupons to be entered in consecutive order				Aggregate amount of Coupons
<i>Bond No.</i>	<i>0,186,983</i>	<i>for £500</i>		<i>£ s d</i>
				<i>7 10 0</i>
	<i>0,186,974</i>	<i>for £500</i>		<i>7 10 0</i>
				<i>£15 0 0</i>

TO BE SIGNED BY CLAIMANT.

I hereby declare that the coupons above-mentioned relate to Bonds
which are my own property and are in the possession of *myself*.

Signature MARY ALICE HODSON.

Date *5th Dec. 1909.*

N.B.—The Bonds in support of any Claim to be produced when
required.

No. 185.

INCOME TAX.

I HEREBY CERTIFY, that on paying to *Extz. Jno. Hy. Hodson, per Mrs. Hodson*, of 135 New Road, C.-on-M., Manchester, the Sum mentioned in the second Column of the subjoined Statement, I deducted for Income Tax the amount set forth in the third Column of the said Statement, and I further certify that the amount of the Tax so deducted has been paid by me to the proper Officer for the receipt of Taxes.

Signature

Residence

Date 190 .

Description of the Property,* or Office, out of which the Rent, Annuity, Salary, Pension, or Interest is payable	Amount of Rent, Annuity, Interest, &c., from which I have deducted the Tax	Amount of Income Tax deducted by me	Period to which the Rent, Annuity, Salary, Pension, or Interest was due
	£ s d	£ s d	Date
<i>Loan on Mortgage of property situate No. 1 Slade Lane, Long-sight</i>	10 0 0	0 10 0	<i>Year ended 1st Nov. 1908</i>

*N.B.—In the case of Property, its situation, including Parish, County, and names of Occupiers must be distinctly stated.

This Form is supplied for the purpose of being filled up by the party deducting the Tax from the Income of the Claimant, and when filled up it must be attached to the Form on which the Claim is made for the return of the Tax.

No. 185.

INCOME TAX.

I HEREBY CERTIFY, that on paying to *Extx. Jno. Hy. Hodson, per Mrs. Hodson, of 135 New Road, C-on-M., Manchester*, the Sum mentioned in the second Column of the subjoined Statement, I deducted for Income Tax the amount set forth in the third Column of the said Statement, and I further certify that the amount of the Tax so deducted has been paid by me to the proper Officer for the receipt of Taxes.

Signature

Residence

Date 190 .

Description of the Property,* or Office, out of which the Rent, Annuity, Salary, Pension, or Interest is Payable	Amount of Rent, Annuity, Interest, &c., from which I have deducted the Tax	Amount of Income Tax deducted by me	Period to which the Rent, Annuity, Salary, Pension, or Interest was due
	£ s d	£ s d	Date
<i>Chief Rent arising out of property situate No. 5 Bury New Road, Higher Broughton</i>	20 0 0	1 0 0	<i>Year ended 25th Mar. 1909</i>

*N.B.—In the case of Property, its situation, including Parish, County, and names of Occupiers must be distinctly stated.

This Form is supplied for the purpose of being filled up by the party deducting the Tax from the Income of the Claimant, and when filled up it must be attached to the Form on which the Claim is made for a return of the Tax.

Certificates of deduction required.

There is not any certificate of deduction required in the case of income derived from dividends on stocks inscribed in the books of the Bank of England, &c. With respect to dividends and interest payable by public companies, these are *usually* issued with a counterfoil such as that of the Blankshire Carriage Company. These counterfoils must accompany the claim. In some cases, *e.g.*, The London and North Western Railway Company, the counterfoils are to be sent to the company to be verified before the claim is sent up. If, however, the dividend, &c., has been paid without any counterfoil being issued, or if the counterfoil has been lost, a certificate must be obtained on the form No. 185 or 185A, whichever may be appropriate. Form No. 185A has been filled in to illustrate the manner in which it should be done. The tax on interest on Foreign Government loans, &c., is deducted by the bankers, and here the certificate No. 189A is required. In the case of mortgage interest and chief rent, the Form No. 185 is required. These forms should be filled up to the extent shown, and forwarded to the respective parties for completion. In the case of the house property, the collector's receipt must be attached to the claim.

Dividend described as "Free of Income Tax."

Expression should not be used

Particular attention is directed to the case of the Blankshire Carriage Company dividend, described as payable "Free of Income Tax." The expression is misleading, and should not be used. As a matter of fact, it should be "The company pay the tax on the dividend." The dividend is really the balance of an amount from which tax has been deducted, and thus each shareholder has indirectly suffered

deduction of tax, and is entitled to have it repaid to him if his income is within the limit. Suppose tax to be at 1s., and a person's total income to be £140, consisting solely of a dividend on £2,800 at 5 per cent. described as payable "free of income tax." Such a one would be entitled to recover £7 7s. 4d.; in other words, £140 is the dividend after deduction of 1s. in the £ (or $\frac{1}{20}$ ths of it), and that the dividend was really *£147 7 4

Actual amount
of dividend.

Less tax at 1s.	...	...	...	7	7	4
				£140	0	0

The actual amount of the dividend is easily obtained by a simple proportion sum, thus—

£1 less the current rate of tax : £1 :: the actual amount of dividend received : the amount of such dividend before deduction of tax ;

or, taking the example given above—

19s : 20s. : £140 : the sum required.

That is, $\frac{1}{20}$ ths of the gross dividend is £140,

and the gross dividend is $\frac{£140 \times 20}{19}$

or £147 7s. 4d.

With tax at 1s. the following is an easier mode of calculation :—

Net dividend	...	...	...	...	£140	0	0
Add 1s. in the £ on	£140	0	0	...	7	0	0
1s.	"	"	7	0	0	0	7
1s.	"	"	0	7	0	0	4
Gross dividend	...	£147	7	4			

*In the case of *Attorney-General v. The Ashton Gas Co.* it has been held by the House of Lords (21st November 1905) that where the dividend of a gas company was by their Act limited to 10 per cent., they were not entitled to pay such dividend without deduction of income tax.

Claims in case where dividends are so declared and paid.

The importance of this is more apparent when we come to the case of a person whose income has nearly approached £400 or £500, &c., and it consists partly of a dividend declared “free of income tax,” e.g., say

	£	s	d
Salary	389	19	0
Dividend on £200 at 5 per cent. “free of income tax”	10	0	0
	<u>£399</u>	<u>19</u>	<u>0</u>

The income really is—

	£	s	d	£	s	d
Salary				389	19	0
$\frac{2}{9}$ ths of £10	10	10	6	10	10	6
Less Tax at 1s.	0	10	6			
	<u>10</u>	<u>0</u>	<u>0</u>			

Total £400 9 6

He is thus not entitled to an abatement of £160, but only of £150. It may readily be seen that where his income under similar circumstances appears to be not quite £700 he may not be entitled to any abatement—the *actual* income exceeding £700.

The payment of a *dividend* “free of income tax” differs slightly from that of *interest*. In the former case, as the shareholder is entitled to all the profit he clearly bears the tax and is entitled to recover. In the latter case, the borrower either :—

- (1) Makes a present to the lender of the amount of the tax ; or
- (2) Pays such a rate of interest as yields 5 per cent. (or as the case may be) after deduction thereof.

The practice, until recently, was that where the interest was paid in accordance with the terms of an agreement or of a public announcement (as is the case with interest on loans to cotton mills, &c., in Lancashire) it was regarded as increased interest and tax was repaid; but in other cases repayment was refused.

Claims in case where dividends are so declared and paid.

The authorities have recently taken a different view, and are now rejecting all such claims. The legality of this new position is in dispute.

In the case of a person who is entitled to claim exemption and whose income, or any part thereof, is derived from dividends of stocks inscribed in the books of the Bank of England, it is possible to have the dividends remitted in full without deduction of tax. The proper course to pursue is to make a claim at the end of any year for repayment of tax deducted, and to forward with the claim a request to have the dividends remitted in full in the future, when the dividends will, as a rule, be remitted in full as desired.

Stocks inscribed at Bank of England.

The two following claims would be appropriate in the case of a person who had paid tax on his salary without being aware of his being entitled to have the assessment made on an average of past years, or from any other cause.

Forms where abatement had not been claimed.

The first case is one where the amount has been arrived at properly, but there has not been any claim made for the abatement. The second is a case of the proper amount not having been ascertained at all, *e.g.*, where, having neglected to make a return, he has been assessed by the Surveyor, and paid without claiming the abatement or appealing against the assessment.

DECLARATION OF INCOME.

I declare that I am resident in the United Kingdom, and that the following is a true account of my income from **every source**, whether taxed or not, for the year to 5th April 1909, and I therefore claim to be repaid the sum of £7 18s 0d.

J. H. Kershaw,

Signature

1st December 1909.

Date

The Claimant must set forth every source of his income, with the amount derived from each source, whether Tax has been paid on it or not.

No. 1. SOURCE OF INCOME.		Annual Amount of Income from each source		Amount of Income Tax paid on, or deducted from each source of Income	
N.B.—With regard to the income received through the Bank of England or from the Supreme Court Pay Office, see Instruction No. 4 (d) opposite		£	s d	£	s d
<i>Salary as Assistant to Messrs. A. and B., of No. — Princess Street, Manchester.</i>		Year 1905	£200		
		" 1906	250		
		" 1907	300		
			<u>£750</u>		
<i>Stanway Breweries, Lim.: One year's interest on £200 4 per cent. Debenture Stock to 31st March 1909</i>		<i>Average</i>	240 0 0		12 10 0
<i>As per Certificate of Deduction annexed, Manchester and County Bank, Lim.: Interest on balance in their hands for the year</i>			20 0 0		1 0 0
<i>(See p. 435.)</i>			2 0 0		
<i>Abatement of £160 as 1s. in the £</i>			£8 0 0		
<i>* Less Income Tax on Bank Interest</i>			0 2 0		
			<u>£7 18 0</u>		
Total Amount of Income and Income Tax thereon		£	272 0 0		13 10 0

No. 2. Particulars of CHARGES on INCOME, such as GROUND RENT, ANNUAL INTEREST, &c.

If there be no such charges, insert "None."

If there be no such charges, insert "None."		Annual Amount	
Nature of the Charge	Name and Residence of Person to whom payable	£	s d
(a) Ground Rent	None.		
(b) Mortgage or Loan			
(c) Other Annual Charge			
* Total Charges and Income Tax thereon .. ..		£	.. ..
Total Amount of Income less charges and amount of Income Tax thereon .. ..		£	.. ..
		272	0 0
			13 10 0

* These totals must be deducted from the totals shown in No. 1 as the tax on the charges is recoverable from the persons to whom the charges are paid.

Having examined the preceding Claim, I certify that the Claimant appears to be entitled to abatement of Income Tax, and to be repaid the sum of £

Given under my hand this

190 .

day of

District —

Surveyor.

F F

DECLARATION OF INCOME.

I declare that I am resident in the United Kingdom, and that the following is a true account of my income from every source, whether taxed or not, for the year to 5th April, 1909 and I therefore claim to be repaid the sum of £8 0s. 0d.

J. R. Kershaw,
Signature
1st December 1909.
Date

The Claimant must set forth every source of his income, with the amount derived from each source, whether Tax has been paid on it or not.

No. 1. SOURCE OF INCOME.		Annual Amount of Income from each source		Amount of Income Tax paid on, or deducted from, each source of Income	
		£ s d		£ s d	
N.B.—With regard to income received through the Bank of England or from the Supreme Court Pay Office, see Instruction No. 4 (d) opposite.					
Salary as Assistant to Messrs. X., Y. & Z., No. —, Mosley Street, Manchester.	Year 1905	..	..	£200	
	" 1906	..	..	250	
	" 1907	..	..	300	
				£750	
	Average	..	..	£250	
Total Amount of Income and Income Tax thereon		..	..	£	16 0 0
				320 0 0	16 0 0

No. 2. Particulars of CHARGES on INCOME, such as GROUND RENT, ANNUAL INTEREST, &c.

If there be no such charges, insert "None."

Nature of the Charge.		Name and Residence of Person to whom payable.		£ s d		
(a) Ground Rent	..					
(b) Mortgage or Loan	£ at					
(c) Other Annual Charge	per cent.					
		None.				
Total amount of Income less charges and amount of Income Tax thereon		..		..	..	£
		..		..	..	..
				320	0	0
						16 0 0

* These totals must be deducted from the totals shown in No. 1 as the tax on the charges is recoverable from the persons to whom the charges are paid.

Having examined the preceding Claim, I certify that the Claimant appears to be entitled to abatement of Income Tax, and to be repaid the sum of £ Given under my hand this day of 19 .. Surveyor.

STANWAY BREWERIES, LIMITED.

No..... STANWAY BREWERY (*Established 1600*),
STANWAY, 31st March 1909.

INTEREST ON 4 PER CENT. DEBENTURE STOCK.

Annexed is a warrant for the Interest on the Debenture Stock standing in your name as per statement below.

I hereby certify that the income tax on the amount of this Warrant will be paid by the Company. Proprietors claiming exemption from Income Tax are informed that the Inland Revenue Department will receive this statement as a voucher.

T. LEVERSON,

Secretary.

<i>Debenture Stock.</i>				£	s	d
Half-year's Interest to 31 Mar. 1909 on £500				10	0	0
Less Income Tax at 1s. in the £	...	...		0	10	0
				£9	10	0

J. H. KERSHAW, ESQ.

This Statement to be retained by the Proprietor.

**Overpayment
of Tax.**

It may be noticed in this second case that when he has obtained repayment of the £8 os. od. the claimant will have paid £8 os. od. for tax on a total income of £250. He ought really to have paid only £3 7s. 6d., being 9d. in the £ on £90 (£250, less £160). The difference arises by reason of his having neglected to appeal and having paid on £320 in the first place, instead of £250.

In both these cases it must be assumed the person has omitted to claim the relief to "earned" incomes (see *post*), and consequently he has to pay at 1s. in the £. Had he claimed such relief he would *ipso facto* have had the abatement before paying.

**Case of trust
estate.****Claims by
different
persons.**

We will now deal with the one case, above all others, in which tax is paid in full by persons who are really entitled to exemption or abatement.

Suppose a testator dies leaving property bringing in an income of £1,000 per annum, and which he directs to be applied as follows : Annuities of £350 and £50 to his widow and brother respectively, and the balance—five-twelfths to each of his two daughters, and two-twelfths to his niece. The whole of the income would be taxed at its source, say :—

	Gross.	Tax.	Net.	Case of trust estate.
	£ s d	£ s d	£ s d	Claims by different persons.
London and North Western Railway Company, interest on £12,500 4 per cent. debenture stock	500 0 0	25 0 0	475 0 0	
(Tax would be deducted by the Company on payment.)				
Lancashire and Yorkshire Railway Company, interest on £5,000 4 per cent. debenture stock	200 0 0	10 0 0	190 0 0	
(Tax would be deducted by the Company on payment.)				
Turkish Government, interest on £10,000 converted stock at 1 per cent.	100 0 0	5 0 0	95 0 0	
(Tax would be deducted by the Bank on collection of coupons.)				
Freehold property, situate at D	250 0 0	12 10 0	237 10 0	
(Tax would be paid by the Executors under Schedule A.)				
	1,050 0 0	52 10 0	997 10 0	
Less interest on mortgage, £1,000 at 5 per cent	50 0 0	2 10 0	47 10 0	
	£1,000 0 0	50 0 0	950 0 0	

Case of trust
estate.

Claims by
different
persons.

The income would be distributed as follows :—

	£	s	d	£	s	d	£	s	d
Balance of Income	...	...	...	...	...	...	950	0	0
Mrs. A. (widow) annuity ...	350	0	0						
Less Income Tax	...	...	17	10	0				
						332	10	0	
Mr. A. (brother) annuity ...	50	0	0						
Less Income Tax	...	...	2	10	0				
						47	10	0	
							380	0	0
Balance	...	...	...	...	...	...	570	0	0
Miss A. A. (daughter) $\frac{1}{12}$ ths ...	250	0	0						
Less Income Tax	...	...	12	10	0				
						237	10	0	
Miss B. A. (daughter) $\frac{1}{12}$ ths ...	250	0	0						
Less Income Tax	...	...	12	10	0				
						237	10	0	
Miss C. D. (niece) $\frac{1}{12}$ ths ...	100	0	0						
Less Income Tax	...	...	5	0	0				
						95	0	0	
							570	0	0

Mrs. A., Miss A. A., and Miss B. A. are all entitled to abatement of £160, as they have no other income, and they can recover tax thereon for three years back.

Mr. A. and Miss C. D. are entitled to exemption, as they have no other income, and they can likewise recover the tax on their annuity and share of income respectively.

Mrs. A.'s claim would be as follows (and Mr. A.'s would be precisely the same, except that the Exemption Form (No. 40) would have to be used instead of the Abatement Form No. 40A) :—

DECLARATION OF INCOME.

I declare that I am resident in the United Kingdom, and that the following is a true account of my income from **every source**, whether taxed or not, for the year to 5th April 1909, and I therefore claim to be repaid the sum of £8 0s. 0d.

Signature _____

Date _____

The Claimant must set forth every source of his Income, with the amount derived from each source, whether Tax has been paid on it or not.

No. 1. SOURCE OF INCOME. N.B.—With regard to income received through the Bank of England or from the Supreme Court Pay Office, see Instruction No. 4 (d) opposite		Annual Amount of Income from each source	Amount of Income Tax paid on, or deducted from, each source of Income
<i>Annuity under the Will of the late Mr. A</i>		£ s d 350 0 0	£ s d 17 10 0
(As per Certificate of Deduction annexed, page 442).			
Total Amount of Income and Income Tax thereon			
No. 2. Particulars of CHARGES on INCOME, such as GROUND RENT, ANNUAL INTEREST, &c. If there be no such charges, insert "None."		Annual Amount	
Nature of the Charge	Name and Residence of Person to whom payable.	£ s d	
(a) Ground Rent			
(b) Mortgage or Loan			
(c) Other Annual Charge	None.		
* Total Charges and Income Tax thereon		£	
Total Amount of Income less charges and amount of Income Tax thereon		£ 350 0 0	£ 17 10 0

* These totals must be deducted from the totals shown in No. 1 as the tax on the charges is recoverable from the persons to whom the charges are paid.

Having examined the preceding Claim, I certify that the Claimant appears to be entitled to abatement of Income Tax, and to be repaid the sum of £

District Given under my hand, this day of 19 ..

Surveyor.

The claims of Miss A. A. and Miss B. A. would be (Miss C. D.'s being the same except for using Form 40 instead of Form 40A) :—

DECLARATION OF INCOME.

I declare that I am resident in the United Kingdom, and that the following is a true account of my income from every source, whether
 year to 5th April 1909, and I therefore claim to be repaid the sum of £3 0s. 0d.

Signature _____
 Date _____

The Claimant must set forth every source of his Income, with the amount derived from each source, whether Tax has been paid on it or not.

No. 1. SOURCE OF INCOME.		Annual Amount of Income from each source		Amount of Income Tax paid on, or deducted from, each source of Income	
N.B.—With regard to income received through the Bank of England or from the Supreme Court Pay Office, see Instruction No. 4 (d) opposite		£	s d	£	s d
<i>5/12ths Share of the Income of the Residuary Estate of the late Mr. A.— per Account and Certificates of Deduction annexed (p. 443)</i>		437	10 0	21	17 6
Total Amount of Income and Income Tax thereon		437	10 0	21	17 6
No. 2. Particulars of CHARGES on INCOME, such as GROUND RENT, ANNUAL INTEREST, &c.		Annual Amount			
If there be no such charges, insert "None."		Annual Amount			
Nature of the Charge	Name and Residence of Person to whom payable.	£	s d		
(a) Ground Rent					
(b) Mortgage or Loan					
£ at per cent.	5/12ths of Annuities, &c., £450 (per Schedule).	147	10 0	9	7 6
(c) Other Annual Charge					
* Total Charges and Income Tax thereon		230	0 0	12	10 0
Total Amount of Income less charges and amount of Income Tax thereon		230	0 0	12	10 0

* These totals must be deducted from the totals shown in No. 1 as the tax on the charges is recoverable from the persons to whom the charges are paid.

Having examined the preceding Claim, I certify that the Claimant appears to be entitled to abatement of Income Tax, and to be repaid the sum of £

District _____ Given under my hand, this _____ day of _____ 19 Surveyor.

No. 185.

INCOME TAX.

I HEREBY CERTIFY, that on paying to *Mrs. A.*
 of.....the Sum mentioned in the
 second Column of the subjoined Statement, I deducted for Income
 Tax the amount set forth in the third Column of the said Statement,
 and I further certify that the amount of the Tax so deducted has
 been paid by me to the proper Officer for the receipt of Taxes.

Signature

Trustee under the will of the late Mr. A.

Residence

Date 190 .

Description of the Property,* or Office, out of which the Rent, Annuity, Salary, Pension, or Interest is payable	Amount of Rent, Annuity, Interest, &c. from which I have deducted the Tax	Amount of Income Tax deducted by me	Period to which the Rent, Annuity, Salary, Pension, or Interest was due
	£ s d	£ s d	Date
<i>Income of the Residuary Estate of the late Mr. A.</i>	<i>330 0 0</i>	<i>17 10 0</i>	

*N.B.—In the case of Property, its situation, including Parish, County, and Names
 of Occupier, must be distinctly stated.

This Form is supplied for the purpose of being filled up by the party deducting the
 Tax from the Income of the Claimant, and when filled up it must be attached to the
 Form on which the Claim is made or a return of the Tax.

ESTATE OF THE LATE MR. A.

An Account of the Income of the Residuary Estate for the
Year ended 31st December 1908.

Description of Investment	Annual Amount of Income			Amount of Income Tax paid on, or deducted from, each source of Income		
	£	s	d	£	s	d
London and North Western Railway Company— Interest on £12,500 4% Debenture Stock	500	0	0	25	0	0
Lancashire and Yorkshire Railway Company— Interest on £5,000 4% Debenture Stock	200	0	0	10	0	0
Turkish Government— Interest on £10,000 Converted Stock at 1%	100	0	0	5	0	0
Freehold Property situate at D—	250	0	0	12	10	0
Less—Interest on Mortgage— £1,000 at 5%	50	0	0	2	10	0
Less—Annuities	400	0	0	20	0	0
	£600	0	0	£30	0	0
Miss A. A. $\frac{1}{2}$ ths share	250	0	0	12	10	0
„ B. A. $\frac{1}{2}$ ths „	250	0	0	12	10	0
„ C. D. $\frac{1}{2}$ ths „	100	0	0	5	0	0
	£600	0	0	£30	0	0

Case of trust
estate.

Counterfoils would have been despatched by the railway companies with the dividends. The certificates as to the Turkish Government interest should be filled up and signed by the Bank (Form No. 189A). The collector's receipt for Income Tax Schedule A should also accompany the claim. There would, of course, be only one set of certificates. These should be attached to one claim, and the other claims could read, "As per certificates of deduction attached to the claim of Miss A. A., dated ———." If the parties lived in different districts it would be necessary to give such particulars as would enable the claim to which the certificates, &c., had been attached to be traced.

If the claims were all being made at the same time, however, *all* the forms should be sent to the Surveyor in the district where the original claim is made, accompanied by a request that he will send the other claims forward to the proper quarter. It is very desirable to adopt this mode of making claims where possible, as it is great saving of labour *to all parties concerned*.

Sometimes
may have
assessment
adjusted
before
payment.

Suppose that in this case the income, instead of accruing from investments, is derived from a business left by the testator, the claims could be made in a similar manner on the same forms. In such a case, however, the form of return, when sent to the Surveyor, should be accompanied by claims

on Form No. 38 (see Chapter X.), and the assessment would
be made on £1,000

Sometimes
may have
assessment
adjusted
before
payment.

Less Allowances in respect of Mr. A.

and Miss C. D. (two exemptions) ... £150

Allowances in respect of Mr. A.,

Miss A. A., and Miss B. A.,

(three abatements at £160) ... 480

630

Net assessment ... £370

Tax on which would be borne as follows :—

By Mrs. A., on £350

Less abatement 160

£190

„ Miss A. A., on £250

Less abatement 160

90

„ Miss B. A., on £250

Less abatement 160

90

„ Mr. A. Nil

„ Miss C. D. Nil

£370

This obviates the necessity of paying the tax and then
applying for repayment.

As to the position where the income is wholly or in part
derived from an annuity purchased from an insurance
company, see *ante* p. 208.

Separate
treatment
in case of
partners
claiming
exemption, &c.

An interesting case in income tax practice is mentioned in *The Accountant*, 19th August 1893. A business was owned by two partners, who shared profits equally and were assessed separately for the purpose of claiming abatement. By the articles, on the death of either partner, the survivor was to retain the business, but had to pay the executors of his deceased partner, for three years, an annuity equivalent to what his share would have been had he survived. As there is not any deduction allowed "on account of any annuity or annual payment out of profits" (1842, sec. 100, Schedule D, first case, 4th rule), it appeared as though the surviving partner would be obliged to return his income at the total profit (say £650), and deduct the tax upon £325 when paying it to the executors. It was, however, represented to the Surveyor that this would cause needless complications, as both parties were entitled to abatement. The Surveyor, upon hearing the facts, granted separate assessments to the executors and the surviving partner.

It might well be contended that such payments are capital invested by the surviving partner in the purchase of the goodwill, and, that being so, under like circumstances a person would usually be held liable for tax on the whole profits without any abatement. A liberal view was taken in the case in question.

The same forms (Nos. 40 or 40A) are appropriate in the case of a partnership where the partners, being entitled to exemption or abatement, have omitted to claim it, and have paid tax on the whole of their profits.

To revert to the question of husband and wife, the following is an illustration of the effect of the Act of 1897 p. 410):—

Husband and wife.
Act of 1897.

Salary of husband (say)	...	...	£200
„ „ wife	„	...	30
Income from wife's investments	...		20
			£250

Prior to the Acts of 1894 and 1897 the husband would have been liable for tax on the whole £250 (1842, sec. 45), less abatement. Tax would have been paid on the £20 by way of deduction, and it would have been necessary for him to make a return of £230 and to pay upon it, less abatement. Now, however, there will be two distinct claims.

The husband's income is deemed to be £200 + £20 = £220, and he is entitled to abatement, and the wife's income is £30, and she is entitled to exemption.

Effect of Act.

A construction of the Act once suggested by a Surveyor was that where the husband is employed as director and secretary and the wife as bookkeeper to the same company, the husband's employment was not "unconnected with the business of the wife," and they could not be assessed separately. This is very strained, and, we submit, would not have been supported by the Commissioners.

Husband and wife employed in same business.

**Limit of
application
of section.**

It should be observed that the section only applies where the total joint income does not exceed £500, and where each carries on a business, &c. The Act of 1898 does not extend the principle to incomes between £500 and £700.

Forms are issued to meet all necessary cases.

Infants.

In the case of an infant the claim is to be made by the infant's trustee, but in the case of the infant's interest being only a contingent one, repayment will only be allowed of tax on so much income as has been expended in education and maintenance. Where, however, the interest is absolute, the claim should be in respect of the whole of the income, irrespective of whether it is applied for education and maintenance or not. ●

Up to 1911 the official rule as to contingent interests was as follows :- —

“Where income is allowed to accumulate during the period of minority, in the case of a minor who has merely a contingent interest in the property, exemption or abatement is not to be allowed; but, in such a case, the minor, *on coming into possession*, may claim repayment of the duty extending over the whole period of minority, provided he or she were entitled to exemption or abatement for such time.”

In cases where a portion of the income had been applied for maintenance, and a claim had been made in respect of that portion of the income, a claim could be made, when the minor came into possession, in respect of the balance.

The reason of the rule is, of course, because, in the case **Infants.** of a contingent interest, if the infant dies before attaining majority, the unexpended income becomes income *of some other person*—possibly not entitled to abatement. If the interest is vested, the claim must be made within the three years, as the Department (naturally) will not entertain a claim for any further period.

At the early part of the present year (1911) the Board commenced to repudiate such claims, intimating that such accumulations reached beneficiaries as capital ; further, claims in respect of sums expended in maintenance were disallowed except for three years. They set up this suggestion on the ground that the matter had had very careful consideration *in connection with the super-tax*, and that in cases where minors had only a contingent interest and the income was accumulated until attainment of majority, such income could not be regarded as income—and intimated that “the concession” could not be continued. The difference between the two cases was pointed out, and eventually the Board gave way, in view of a statement that the claims had been deferred “in reliance upon the previous practice.”

Replying to a representation from the Income Tax Reform League, the Chancellor of the Exchequer wrote as follows :—

G G

Infants.

TREASURY CHAMBERS,

WHITEHALL, S.W.,

28th April 1911.

DEAR SIR,

With reference to your letter of the 3rd instant, I am desired by the Chancellor of the Exchequer to inform you that the Board of Inland Revenue are advised that where in the case of a contingent gift a minor is not absolutely entitled to the whole income thereof, but to maintenance only, only the amount of income expended on his maintenance and education should be treated as his income for the purpose of a claim to exemption or abatement. The surplus income which became accumulated and capitalised during the minority was not the income of the minor in the past years, and is ultimately received as capital. The Board have felt it necessary to alter their previous practice to conform with this opinion, and to refuse to admit claims in respect of the accumulations of surplus income that may be received by the minor on attaining his majority.

The claims must in future be made within the usual period of three years. Where, however, a complete claim in respect of the whole income could not under the old practice have been made within the three years' time limit, and the allowance of a partial claim in respect of the sums spent on education and maintenance has been postponed under that practice until the attainment of majority, the deferred claim in respect of such sums will be admitted for the whole time.

Yours faithfully,

(Signed) JOHN ROWLAND.

G. O. Parsons, Esq.,

Secretary, Income Tax Reform League.

Sec. 134 of the
Act of 1842.

If a person claiming under the 134th section of the Act of 1842 (see p. 372 *et seq.*) proves his total income not to exceed £160 or £400, &c., as the case may be, he is entitled to exemption or abatement (1853, sec. 30). See also subsec. (2) of sec. 23 of the Act of 1890 (p. 375).

Any claim for repayment on the ground of exemption, &c., must be made within three years of the end of the year to which the claim relates (Act of 1860, 23 & 24 Vict., cap. 14, sec. 10); that for relief to “earned” incomes must be made by the 30th September in the year of assessment.

Time for
claim.

Another point which is very frequently overlooked is that a person whose income is derived from land and houses (taxed under Schedule A), or partly from land and houses and partly from other sources, is entitled to the same exemption or abatement, as the case may be. Possibly one reason why this is overlooked arises from the fact that income tax, Schedule A, is frequently called “property tax,” and it is not realised that it is, in fact, “income tax” just as much as the tax payable under Schedule D.

Income
derived from
property.

In such cases, if the person entitled to the rents, &c., being entitled to exemption, fills up Form No. 38 (which may be had from any Surveyor or Assessor) and sends it to the Surveyor, there will not usually be any difficulty in getting the assessment on the property *discharged*, and thus saving the trouble of paying tax and then recovering it.

As the result of correspondence, it was decided in 1890 by the Board of Inland Revenue that Wesleyan ministers should not be required to enter the annual value of the furnished houses, provided for them free of expense, in their returns of income for the purpose of assessment to income tax. In many cases this will mean total exemption. (As to the assessment of the houses to Schedule A, see *ante* p. 38.)

Wesleyan
ministers.

Tennant v. Smith.

This is in accordance with the subsequent decision of the House of Lords in the case of *Tennant v. Smith* (p. 453).

**Exemption claim by executors.
Apportionment.**

Where a person having (say) £1,200 per annum dies (say) 5th May or 5th July, &c., his total income for that year is £100 or £300 (the amount received for the portion of the year), and he is entitled to exemption or abatement respectively, and his representative may recover accordingly.

Married women.

Similarly, where a lady having a like income marries, she might make a claim for herself apportioned up to the date of her marriage, and the remainder of her income would fall in with her husband's.

Bowers v. Harding.

Schoolmaster may not deduct wages of servant.

In *Bowers (Surveyor of Taxes) v. Harding*, decided by the Queen's Bench Division, 5th February 1891, a national schoolmaster and his wife claimed exemption on the ground that, though their joint income was £168 per annum, they should be entitled to deduct £30 for the board and wages of a servant, as a necessary expense to enable them to perform their duties. It was held that the salary was derived from a public employment, and was taxable under Schedule E, and that the expense of keeping a servant was not incurred "wholly, exclusively, and necessarily" in the performance of their duties (1853, sec. 51).

Langston v. Glasson.

Salary of bursar liable to direct assessment.

In *Langston (Surveyor of Taxes) v. Glasson*, Mr. Glasson appealed against an assessment of £450, the amount of his stipend as principal bursar of St. John's College, made upon him under Schedule E. By sec. 40 of the Act of 1842 all

bodies collegiate are liable to be assessed in respect of their corporate property. By sec. 54 their officer is to deliver an account of the profits before any dividend shall have been made to any person having any share in such profits, but it is not necessary to include the salary of any officer otherwise chargeable under the Act. No. 260 of the “General Instructions to Surveyors of Taxes, 1886,” issued by the Board of Inland Revenue, states that members of a collegiate body are not liable to direct assessment in respect of sums which they are, as members, legally entitled to receive out of the taxed income of the corporation, but salaries paid to persons, not members, are chargeable by direct assessment unless they are, by statute or otherwise, a charge on the revenue of the corporation. Mr. Glasson claimed that, though not actually a member, his salary was, “by statute,” a charge on the revenue of the corporation, and was, therefore, exempt from direct taxation. The Surveyor contended that the office of bursar in this case, not being held by a Fellow or any person on the foundation of the college, was an “office” held under a society corporate, and fell under Rule 3 of Schedule E. The Queen’s Bench Division held (6th February 1891) that the salary was, by sec. 54, liable to direct assessment under Schedule E.

Langston v. Glasson.

Salary of bursar liable to direct assessment.

A most important judgment was delivered by the House of Lords on the 14th March 1892 in the case of *Tennant v. Smith*. The appellant was a bank agent, and was bound, as part of his duty, to occupy the bank-house. He was liable

Tennant v. Smith.

In order to be taxable a benefit must be capable of being turned into money.

Tenant v. Smith.

In order to be taxable a benefit must be capable of being turned into money.

to removal at any time, but was not entitled to vacate the house without leave of the directors, or to sub-let any part of the premises, and in case he desired to occupy other premises there was not any addition to be made to his income in respect of any house-rent which he might have to pay. His income, exclusive of any estimate of the value of the part of the bank occupied as residence, was under £400; but, if the annual value of the house was added, it was more than that sum. It was held that the appellant was entitled to the abatement (then in force) of £120, and that the value of the house was not to be taken into account.

The Lord Chancellor said :

"This is an Income Tax Act, and what is intended to be taxed is income. . . I am of opinion, in the words of Lord Young, that the thing sought to be taxed is not income unless it can be turned into money."

The view was further expressed that nothing was to be brought into account except what was chargeable for assessment.

M'Dougall v. Sutherland, following Tenant v. Smith.

The decision was followed in *M'Dougall (Surveyor of Taxes) v. Sutherland* (Court of Session, Scotland, 6th, 7th, and 20th March 1894), where the facts were very similar, the house in this case being the Free Church Manse of Rothesay, which is vested in trustees for behoof of the Free Church congregation of Rothesay.

The case of *Corke v. Fry* (Court of Session, Scotland, 9th March 1895) was distinguished from the above on the ground that, in this case, the appellant, the Rev. S. C. Fry, a minister of the Established Church of Scotland, could have let his manse, whereas the occupants in the other cases had not any such power. Accordingly, it was held that the value of the manse must be taken into account in computing the amount of his income for the purpose of ascertaining whether he was entitled to abatement.

Corke v. Fry
distinguished
from
Tennant v. Smith.

If the salary of an official is £700, and the company pay the tax upon it, the person is not entitled to an abatement. If the extra benefit is capable of being turned into money, it is clear that under the decision in *Tennant v. Smith* (p. 453) it must be added. Though the tax is paid by the company, the assessment is upon the individual, and he receives a monetary benefit, just as if the company paid any other private account for him.

Tax on salary
of employee
paid by
company.

A very interesting point in this connection arose in *Re James Walker* (Court of Session, Scotland, 11th January 1906).

Re James Walker.

Profits not
paid to person
participating.

The question in this case was whether the appellant, James Walker, of R. & J. Dick, 3 M'Phail Street, Glasgow, was bound to pay income tax on profits put to his credit in the firm's books for the purpose of paying out the capital of the late James Dick, a member of the firm. The Commissioners of Inland Revenue decided that he was, and so assessed him.

Re James Walker.

Profits not paid to person participating.

The Court reversed the determination of the Commissioners, on grounds explained by Lord Stormonth-Darling, who gave the opinion of the Court, and found the appellant entitled to expenses.

Lord Stormonth-Darling said that the case arose on a claim by the appellant for abatement of income tax which the Commissioners had refused to allow. The claim was made on the ground that the appellant's total income from all sources for the year of assessment, though exceeding £160, did not exceed £600, and he was therefore entitled to relief equal to the income tax upon £120. His precise income he stated at £561, made up of £316 of salary (the immediate subject of assessment) and £245 which had already borne tax. It was conceded by the Crown that that sum of £561 was all the income of which he had the actual enjoyment, but they contended that his income from all sources amounted to £2,000 a year, if account were taken, not only of 10 per cent. of the profits of the business of R. & J. Dick paid to him in cash, but of the balance of those profits credited to his account in the books of R. & J. Dick in accordance with a certain deed of arrangement granted by the late Mr. James Dick on 4th March 1902. The question for decision was whether that balance of profits was part of the appellant's income for the year of assessment, and that depended on the just construction of the deed of arrangement. The late Mr. Dick, who was the grantor of it, was the sole proprietor of a large and lucrative business in Glasgow as a boot, shoe, and

belt manufacturer, and he seemed to have conceived the idea that the best means of achieving the double purpose of getting payment of his large capital out of the business after his death, and at the same time benefiting the heads of the various departments of his business, was to give them a prospective interest in the profits, and power ultimately to acquire the business itself. Accordingly by the first article of the deed he named fifteen employees (of whom the appellant was one), and he allocated to each of them a number of shares, varying in number from ten to two, and making in all one hundred shares, with a declaration that the provisions of the deed in their favour should not become vested interests until the whole of his capital and interest had been paid out, and that it should not be competent for them on any ground whatever to dispose of their interest in the profits or in the business itself. Ten per cent. of the profits of the business were to be paid over to these employees in cash, and the remaining profits were to be credited to their respective accounts in the books of R. & J. Dick until the whole of Mr. Dick's capital and interest was paid out. As if to emphasise that the interest of the employees in their profits was to be contingent on Mr. Dick's own capital being paid out, there was a declaration that the "said remaining profits allotted to the employees "as aforesaid shall be accumulated without adding interest, "and form a fund available for the paying out of my capital "from the business." Although the employees were to carry on the business Mr. Dick's trustees were placed in a position of absolute control. until the whole of Mr. Dick's capital and

Re James Walker.

Profits not paid to person participating.

Re James Walker.

Profits not
paid to person
participating.

interest had been fully paid to them. At the date of Mr. Dick's death, on 7th March 1902, his capital in the business amounted to £351,550. At the same time the firm of R. & J. Dick had an overdraft of £143,177 from the bank. It was arranged between the trustees and the employees that the overdraft should be liquidated by the employees before they began to pay out Mr. Dick's capital, and by 31st December 1903 so prosperous had the business been that the overdraft had been reduced by £93,209; accordingly at 31st December 1903 the debt to the bank stood at £49,968; the debt to Mr. Dick's trustees stood at its original figure of £351,550; and the accumulated 90 per cent. of the profits of the business credited to the employees in the books of the firm amounted to £72,076 17s. 1d. The assessable profits of the business for the year ending 5th April 1905 were £43,441, for which an assessment had been made on R. & J. Dick, and paid. What was the effect of the deed of arrangement on the legal position of these employees until the time arrived for Mr. Dick's trustees making a conveyance of the business in their favour? Were they still only employees with a right to salary and immediate payment of a small percentage on profits, together with a prospective and contingent interest in the business itself? Or were they a purchasing partnership, with immediate entry to the business, but with a postponement of the obligation to pay the price, and only such limitations on their right of property as were necessary to give the seller security for the price? His Lordship had no hesitation in adopting the first of these alternatives and rejecting the

second. The entire deed seemed to him redolent of the grantor's desire to keep the business under the control of his trustees until the whole of his capital and interest had been paid out. Till then the employees were not to touch a shilling of the profits except the small percentage, which was much more appropriate to active management by a servant than to the position of a principal. In short, the business was to be in law and in fact the property of the trustees until the conditions were fulfilled for their conveying it to the employees. If so, it was impossible to predicate of the appellant that his share of the 90 per cent. of profits was a part of his income for the year of assessment. It was no doubt carried to his credit as a book entry, but it was primarily to form a fund available for the paying out of Mr. Dick's capital, and it might never be the property of the appellant at all. The King had had his tax upon it in the hands of R. & J. Dick, and when the Crown demanded that the appellant's presumptive share of their profits should be reckoned as part of his individual income, the Crown must show that the share was not presumptively or contingently, but actually and indefeasibly his. In that the Crown had failed.

Re James Walker.

Profits not paid to person participating.

The other Judges concurred.

By sec. 71 of the 1910 Act there is not to be any abatement to a person not resident in the United Kingdom after the year 1908-9, except to :—

Act of 1910, sec. 71.

Person abroad.

A person who is, or has been, in the service of the Crown, &c.; or, who is employed in the service of a Missionary

Act of 1910,
sec. 71.

Person
abroad.

Society abroad; or, who is resident in the Isle of Man or Channel Islands; or, who is resident abroad for the sake of his health.

But in such case *all* his income must be taken into account whether taxable here or not.

Also, non-residents are not to be charged with tax on interest of any security of a foreign State, or British possession payable in the United Kingdom.

Relief is to be claimed within six months of the end of the year.

The section is as follows :—

(1) No exemption, abatement, or relief under the Income Tax Acts which depends wholly or partially on the total income of an individual from all sources shall be given to any person, unless the person claiming the exemption, abatement, or relief is resident in the United Kingdom :

Provided that any person who is or has been employed in the service of the Crown or who is employed in the service of any missionary society abroad or in the service of any of the native States under the protectorate of the British Crown, and any person resident in the Isle of Man or Channel Islands and any person resident abroad who satisfies the Commissioners that he is so resident for the sake of health, shall be entitled to any relief, exemption, or abatement to which he would be entitled if he were resident in the United Kingdom, and if his total income from all sources were calculated as including any income in respect of which income tax may not be chargeable as well as income in respect of which income tax is chargeable.

(2) Income tax shall not be payable in respect of the interest or dividends of any securities of a foreign State or a British possession which are payable in the United Kingdom, where it is proved to the satisfaction of the Commissioners that the person owning the securities and entitled to

the interest or dividends is not resident in the United Kingdom; but, save as provided by this or any other Act, no allowance shall be given or repayment made in respect of the income tax on the interest or dividends on the securities of any foreign State or any British possession which are payable in the United Kingdom.

**Act of 1910,
sec. 71.**

**Person
abroad.**

Relief from income tax under this subsection may be given by the Commissioners either by way of allowance or repayment on a claim being made to them for the purpose within six months of the end of the year for which the income tax is charged.

The section is modified by the Revenue Act 1911 as follows :—

**Rev. Act, 1911,
sec. 12.**

Sec. 12.—The proviso to subsection (1) of section 71 of the principal Act (which gives the right to persons resident abroad to claim relief, exemption, or abatement from income tax in certain cases) shall apply to a widow who is in receipt of a pension chargeable with income tax and granted to her in consideration of the employment of her late husband in the service of the Crown as it applies to the persons described in the proviso.

Sec. 13.—When the securities of a foreign State or British Possession are held under any trust, and the person who is the beneficiary in possession under the trust is the sole beneficiary in possession and can, by means either of the revocation of the trust or of the exercise of any powers under the trust, call upon the trustees at any time to transfer the securities to him absolutely free from any trust, that person shall be deemed to be the person owning the securities for the purpose of subsection (2) of section 71 of the principal Act (which exempts from income tax under certain circumstances the interest and dividends of the securities of a foreign State or British Possession).

Sec. 13.

Act of 1910,
sec. 68.

Abatement in
respect of
children.

By sec. 68 of the 1910 Act, where the total income from all sources does not exceed £500, an abatement of tax on £10 is allowed in respect of each child living and under 16 years of age at the commencement of the income tax year. This includes step-children, but not illegitimate children (unless the parents have married each other).

This relief (like abatement, &c.) comes off the 9d. part of the income (see *post*).

The section is as follows :—

(1) If any individual who has been assessed or charged to income tax, or has paid income tax either by deduction or otherwise, claims and proves, in manner prescribed by the Income Tax Acts, that his total income from all sources, although exceeding one hundred and sixty pounds, does not exceed five hundred pounds, and that he has a child or children living and under the age of sixteen years at the commencement of the year for which the income tax is charged, he shall be entitled, in respect of every such child, to relief from income tax equal to the amount of the income tax upon ten pounds.

The expression "child" and the expression "children" in this provision includes stepchild or stepchildren, but does not include illegitimate child or illegitimate children: Provided that where the parents of any illegitimate child or children shall, after the birth of such child or children, have married each other, such illegitimate child or children shall be included in the expression "child" and "children."

(2) Any relief under this section shall be given either by reduction of the assessment, or repayment of the excess which has been paid, or by both those means, as the case may require.

(3) Subsections (2) and (3) of section 19 of the Finance Act 1907 shall be construed as if this section were mentioned therein as well as section 8 of the Finance Act 1898 and sec-

tion 54 of the Income Tax Act 1853, and the provisions of the Income Tax Acts, which relate to claims for exemption, relief, or abatement, or the proof to be given with respect to those claims shall apply to claims for relief under this section, and the proof to be given with respect to those claims.

The following are illustrations of the effect of sec. 54 of the Act of 1853, as to deduction of life insurance premiums (see p. 259 *et seq.*):—

Claims in respect of life insurance premiums.

(1) A.'s income (ascertained in accordance with the rules already laid down) is	...	£850 per annum	
He pays premiums on policies on the life of himself and his wife to the extent of	...	50	„
He is therefore only called on to pay tax on	... ..	£800	„
(2) B.'s income is	... ..	£600	„
And he pays premiums to the extent of	... ..	100	„
He is liable to pay tax (less abatement) on	... ..	£500	„

It must be observed, however, that his income is £600 per annum (not £500), and he is only entitled to the abatement of £120, not £150.

(3) D.'s income is	... ..	£600 per annum	
And he pays premiums	... ..	120	„
Leaving	... ..	£480	

Deduction
limited to
one-sixth of
income.

He is only allowed to deduct premiums to the extent of one-sixth of his income, and he is liable for tax (less abatement) on £600

Less one-sixth of £600 ... 100

Leaving ... £500

Any person who was entitled to claim this allowance and neglected to do so may make a claim any time within three years of the end of the year to which the claim relates (Act of 1860, sec. 10).

CHAPTER VIII.—(*continued*).

EXEMPTIONS AND ABATEMENTS—(*continued*).

PART II.—*Charities and Public Buildings.*

CHARITIES are exempt from taxation under any schedule on due proof that the rents or interest which would otherwise be chargeable are *bonâ fide* applied to charitable purposes (1842, sec. 61, Schedule A, No. VI.; sec. 88, Schedule C; sec. 105, Schedule D). **Charities exempt.**

Any college or hall in any of the Universities is also exempt from taxation under Schedule A, as are also hospitals, public schools, and almshouses; and any building belonging to a literary or scientific institution used solely for the purpose of such institution where there is not any payment demanded for instruction (1842, sec. 61, Schedule A, No. VI.). **Colleges in Universities.
Public schools, &c.**

There is not any express provision in the Acts as to the exemption of churches from assessment to Schedule A, but many years ago the Board of Inland Revenue issued instructions to exempt all places of worship from assessment, as in the case of hospitals, &c., except as regards ground rent and mortgage interest. **Churches, &c.**

H H

Friendly societies, &c.

Under Schedule C the stock belonging to friendly societies is exempt, provided that the sum assured to any person under the rules does not exceed £200, or the annuity payable to any person does not exceed £30 per annum, as the case may be (1842, sec. 88), and where such societies are owners of lands, &c., or receive interest or profits or gains, they are exempt from assessment in respect of them under Schedules A or D (1853, sec. 49; 1889, sec. 12).

By the Industrial and Provident Societies Act 1893 a registered society is not chargeable under Schedules C and D unless it sells to persons not members thereof, and the number of shares of the society is limited either by its rules or its practice.

By the Trade Union (Provident Funds) Act 1893 (56 & 57 Vict., cap. 2) exemption from income tax chargeable under Schedules A, C, and D is granted to any trade union duly registered under the Trade Union Acts 1871 and 1876, subject to the £200, or £30 per annum, limit as in the case of friendly societies above.

The income of the funds of savings banks is also exempt, so far as it is applied in the payment or credit to any depositor of interest not exceeding the sum of £5 in the year for which exemption is claimed (and see *ante*, p. 112), (1842, sec. 88, Schedule C; 1894, sec. 36).

Section 70 of the 1910 Act provides additional exemption as follows :—

Friendly societies, &c.

The exemption from income tax granted by the Income Tax Acts to a friendly society, and by the Trade Union (Provident Funds) Act 1893, to a registered trade union, by the rules of which it appears that the sums assured to any person by the society or union do not exceed if by way of gross sum two hundred pounds, or if, by way of an annuity thirty pounds a year, shall extend to any registered friendly society and to any registered trade union, if the society or union are restricted either by virtue of any Act of Parliament or by their rules from assuring to any person any sum exceeding three hundred pounds by way of gross sum or fifty-two pounds a year by way of annuity.

Most of these allowances, &c., are granted on proof of the necessary facts before the Commissioners for Special Purposes (1842, secs. 61, 88, 98, and 105).

An important case is that of *Coomber v. Justices of Berks*, heard in the House of Lords, 13th, 14th, and 15th November, and 3rd December 1883. The justices of the county, under statutory power, erected a building containing Assize Courts, the necessary rooms and offices, and a police station. Parts of the building were occasionally used for committee meetings and other purposes not connected with the police or the administration of justice, but there was not any profit ever received from the use of any part of the building. The Surveyor sought to assess the justices under Schedule A for the annual value of the building. He contended that the question was, not whether the building produced profit, but whether it was capable of profitable occupation. The justices were

Coomber v. Justices of Berks.

Assize Courts exempt.

**Coomber v.
Justices of
Berks.**

**Assize Courts
exempt.**

the occupiers, and could let it for profit if they chose. The contention on the other hand was that the Crown was the occupier of the buildings, and they were therefore not assessable to income tax. Further, that income tax is not payable where there is not any annual profit legally possible. By statute the justices could not use the buildings for any other than for public purposes, therefore there could not be any profit made. The House of Lords gave judgment in favour of the justices, and overruled *Clerk v. Dumfries Commissioners of Supply*, heard before the Court of Session, Scotland, in 1880. They considered that the buildings were "public buildings," and Lord Blackburn quoted an old judgment (viz., of Lord Kenyon in *The King v. Cook*), to the effect that the Crown was exempt "by virtue of its prerogative, in the "same manner as it is virtually exempted under every Act "imposing a duty or tax on the subjects."

**Blake v.
Mayor, &c.,
of London.**

Public school.

The Court of Appeal held (21st and 23rd May 1887) in *Blake (Surveyor of Taxes) v. Mayor and Citizens of the City of London*, that a school carried on by a public body, not for purposes of profit, but for the benefit of a large portion of the public, and maintained partly by charity, is a "public school" within the meaning of the Act, notwithstanding the fact that the school is partly supported by fees charged for instruction; and as such it is entitled to exemption from tax under Schedule A.

In *The Baird Trustees v. The Lord Advocate* it was decided by the Court of Session, Scotland (9th February and 1st June 1888), that the term "charitable purposes" was to be interpreted in its ordinary and familiar sense, according to which the relief of poverty is signified; and that the words do not have the wide interpretation given to them by the Court of Chancery in England in interpreting the Statute of Charitable Uses, and the Statutes of Mortmain; and that the income of the trust, being applied towards providing the means of meeting or mitigating spiritual destitution among the population of Scotland, was not exempt from taxation—but see *Commissioners of Income Tax v. Pemsel (post)*.

Baird Trustees v. Lord Advocate.

Meaning of "charitable purposes."

In *Needham v. Bowers (Surveyor of Taxes)* it was held by the Queen's Bench Division (4th July 1888) that an institution founded by charitable donations and supported wholly out of payments by the patients, of whom some paid more, and some less, than the cost of their maintenance, was not exempt from tax under Schedule A as a "hospital." The exemption was restricted to a hospital maintained wholly or in part by charity.

Needham v. Bowers.

Hospital.

The case of *St. Andrew's Hospital, Northampton v. Shearsmith (Surveyor of Taxes)* (Queen's Bench Division, 2nd July 1887) was decided similarly on the like grounds.

St. Andrew's Hospital v. Shearsmith.

Hospital.

In *Bray v. The Justices of Lancashire* the Court of Appeal held (31st January 1889) that such parts of a county lunatic asylum as were occupied by officers having an income of

Bray v. Justices of Lancashire.

Asylum occupied by officers.

**Bray v.
Justices of
Lancashire.**

more than £150 per annum (1842, sec. 61, No. VI.) were not in the occupation of the Crown, or the persons using them, exclusively in and for the service of the Crown, and were therefore not exempt from assessment under Schedule A.

**Justices of
Edinburgh v.
Surveyor.
Burgh Court
exempt.**

Municipal buildings (*e.g.*, town halls), so far as occupied for civic purposes, have been held liable to tax under Schedule A, but those parts used for the sittings of the Burgh Court are exempt, being part of the (King's) establishment for the administration of justice (*The Justices of Edinburgh v. The Surveyor of Taxes*, Court of Session, Scotland, 15th November 1889, *sub. nom. Adam v. Maughan*).

**Profits from
baths, &c.,
assessable.**

In the same case it was held that the revenues derived from public baths, markets, and slaughter-houses were assessable, the Court stating that this appeared perfectly plain.

**Queen v.
Special Com-
missioners.
Yorkshire
Penny Bank.**

An interesting point was raised in *The Queen v. Special Commissioners of Income Tax (In re Yorkshire Penny Bank)*. The bank receives deposits in any amount from one penny upwards. There is not any restriction in the amount which may be received from individual depositors, and large deposits are in fact received. For many years the bank had obtained repayment from the Special Commissioners of the duty deducted from interest on investments, but attention having been drawn to the fact that the operations of the bank were no longer confined to the receipt of small deposits, the Special Commissioners, when a claim was presented in respect of the year ended 5th April 1888, declined to repay any larger sum

than the duty on so much of the interest received as had been paid or credited to depositors whose annual interest did not amount to £3. The proposal of the Commissioners was contained in a letter dated the 17th May 1888 to the following effect :—

**Proposal
of Commis-
sioners.**

“The Board are, however, unwilling to withdraw entirely the relief hitherto conceded, and accordingly they have considered how far relief might be granted consistently with a due regard to the interests of the Revenue. The result is that they have consented to grant to the Yorkshire Penny Bank the same measure of relief which they have recently accorded to a very similar institution—namely, to entertain a claim for repayment of income tax in respect of the interest paid to those depositors whose annual interest in any year does not amount to £3.”

On the case coming before the Court (29th and 30th October 1889) a settlement was arranged on the basis of the letter.

Arrangement.

In a case where the profits derived from publishing a book of Psalms and Hymns were distributed among widows and orphans of Baptist missionaries, it was sought (*The Trustees of the Baptist Psalms and Hymns v. Whitwell*) to claim exemption. The Queen's Bench Division held (16th December 1890) that the exemption applies only to “any yearly interest or other annual payment” (1842, sec. 105), and not to “profits or gains,” and that profits are liable to assessment, no matter how applied.

**Baptist
Psalms v.
Whitwell.
“Profits”
not exempt.**

In *Cause (Surveyor of Taxes) v. Committee of Lunatic Hospital, Nottingham*, it was sought to exclude the asylum—originally built out of charitable funds, and a portion of the

**Cause v.
Committee of
Lunatic
Hospital.**

*Case v.
Committee of
Lunatic
Hospital.*

Hospital.

income of which was derived from interest on the endowment fund—from the benefit of exemption from income tax (Schedule A), and inhabited house duty, on the ground that, owing to the receipts for the care of patients who paid at a higher than the ordinary rate, the asylum was self-supporting.

The committee contended that the word “profits” in the Income Tax Acts means what remains after deducting the value of the occupation of the premises where the profit is made, and, if this were done, there would be a loss instead of a profit. Further, that the mere fact that in a single year the asylum had been self-supporting did not disentitle them to exemption; the whole of the income was, by the trust deeds, to be applied to charitable purposes only.

The Queen’s Bench Division held (5th and 6th February 1891) that the committee were entitled to the exemption claimed.

*Commissioners of
Income Tax
v. Pemsel.*

“Charitable
purposes.”

In *Commissioners of Income Tax v. Pemsel* (the Moravian case), it was held that freehold estates, vested in trustees upon trust to apply the income in certain proportions for the maintenance of missionary establishments among the heathen, in connection with a particular religious body, and for the education and support of poor members of the body, were held “for charitable purposes,” and were exempt from income tax under Schedule A (House of Lords, 20th July 1891). This decision appears to overrule that of *The Baird Trustees v. The Lord Advocate* (*ante*, p. 469).

It was held by the Court of Session, Scotland (19th March 1892), in *Sulley v. The Royal College of Surgeons in Edinburgh* that the college was not exempt (under Schedule A) as a "scientific institution," as its main objects were professional, namely, the providing instruction for students, and the granting of licences to practise anatomy, &c.

*Sulley v.
College of
Surgeons.*
College not
exempt.

In *Maughan v. Free Church of Scotland* the facts were as follows :—The Free Church Assembly Hall was held in trust for the Free Church. It was the place of meeting for the General Assembly and Commissioners of Assembly of the Church, and was also sometimes used for other purposes, principally of a religious or semi-religious nature, and for charitable and temperance purposes. There were not any rents or profits made from the hall. It was held by the Court of Session, Scotland, 30th May 1893, that the trustees were rightly assessed under Schedule A on the annual value of the hall, and were not entitled to exemption under No. VI. of sec. 61, as the allowance only applied where rents and profits received by trustees were applied by them to charitable pur-

*Maughan v.
Free Church.*
Hall not
exempt.

The Corporation of Bristol claimed (1892) to be entitled to the allowance under Schedule A in respect of the ownership of three free libraries, on the ground that in respect of such ownership they were a "literary or scientific institution." The Queen's Bench Division held (23rd June 1892, *Andrews v. Mayor, &c., of Bristol*) that the corporation did not come within the exemption, which applied rather to collegiate institutions, public schools, and almshouses. This decision was, however, overruled in *Mayor of Manchester v. McAdam* (*post*).

**Maughan v.
Free Church.**

Hall not
exempt.

poses. The Court pointed out that No. VI. of Schedule A was divided into four heads, viz., allowances in respect of—

Colleges and halls of universities,

Hospitals, public schools, and almshouses,

Buildings, the property of a literary or scientific institution, and

Rents and profits applied to charitable purposes.

**Commissioners of
Income Tax
v. Pemsell**
distinguished.

The hall, they said, certainly could not fall under any of the first three heads, and as there were not any rents received from it, it could not fall under the fourth head, which related to rents and profits of lands, &c., as distinguished from the lands, &c., themselves. The case of *Commissioners of Income Tax v. Pemsell* (p. 472) was not in point, as in that case income was *received* and applied for charitable purposes.

**Mayor, &c.,
of Manchester
v. McAdam.**

Free libraries
exempt.

The case of *Andrews v. Mayor and Corporation of Bristol* was followed by the Queen's Bench Division, 21st November 1894, in the *Mayor and Corporation of Manchester v. McAdam*, where the corporation (unsuccessfully) sought to claim exemption from assessment in respect of the free libraries belonging to the city. The decision was confirmed by the Court of Appeal (8th March 1895), but overruled by the House of Lords (31st July 1896), Halsbury, L.C., dissenting.

**Bain v.
Free Church.**

Free Church
College not
a "public
school."

In *Bain v. Free Church of Scotland* it was sought to establish that the Free Church College, Edinburgh, a divinity hall, was a public school within the exemption in

No. VI., Schedule A, sec. 61 of the 1842 Act. The building is intended for the training of candidates for the ministry after they have completed their undergraduate course at one or other of the national universities, although other students are admitted. The case was heard in the Court of Session, Scotland, 13th January 1897, and judgment was given on the 4th February in favour of the Crown.

*Bala v.
Free Church.*

In *Musgrave v. Magistrates and Town Council of Dundee* (Court of Session, Scotland, 1st and 16th June 1897) a building belonging to the council, and used mainly as a free library, but in one room of which accommodation was provided for a subscription library, was held to be assessable under Schedule A. The case was distinguished from the *Manchester* case, as the building was not used wholly as a free library.

*Musgrave v.
Dundee Town
Council.*

Free library
not exempt
unless used
solely as a
free library.

In *Jno. Brown v. Jno. Smith* (Court of Session, Scotland, 17th and 25th October 1901) it was held that parts of premises occupied for municipal purposes and as private offices were liable to assessment under Schedule A, and that the occasional use of a County Hall as a Court of Justice gave no title to relief.

*Brown v.
Smith.*

Municipal
building used
occasionally
as Court of
Justice.

In *Trustees of the Mary Clark Home v. Anderson* (Surveyor of Taxes), King's Bench Division, 30th June 1904, the facts were as follows:—The home was founded in 1900 for ladies in reduced circumstances, and the building is the property of the trustees. The material rules of the home are that

*Mary Clark
Home v.
Anderson.*

**Mary Clark
Home v.
Anderson.**

a person, to be an inmate, must be (a) 50 years of age or upwards, and (b) in receipt of an income of not less than £25 and not more than £55. (This regulation (b) was open to variation by the Board of Management, but had not been varied by them). Exemption was claimed on the ground that the home was an "almshouse," and the Court approved this view, and granted exemption from income tax, Schedule A, accordingly.

**University
College of
North Wales.**

In *The King v. Special Commissioners of Income Tax; ex parte University College of North Wales* (C.A., 26th February 1900), the college, the funds of which were applied "for the advancement of education," was granted exemption under Schedules A, C, and D.

**Essex Hall
case.**

In *The King v. Special Commissioners of Income Tax; ex parte Essex Hall* it was held (Court of Appeal, 18th May 1911) (approving *Maughan v. Free Church of Scotland*) that the exemption in sec. 61 applied only to rents received, and that Essex Hall, which was in the occupation of the trustees who let out portions, was not exempt.

CHAPTER VIII.—(*continued*).

EXEMPTIONS AND ABATEMENTS—(*continued*).

PART III.—*Relief to "Earned" Incomes.*

BY the Finance Act 1907 the first attempt was made in the **Differen-**
direction of differentiation, and this was extended by **tiation.**
the Finance (1909-10) Act 1910.

In effect these provisions are that where the total income does not exceed £3,000, such part of it as is "earned" bears a lower rate of tax than the remainder.

The provisions are as follows :—

Finance Act 1907, sec. 19 :—

(1) Any individual who claims and proves, in manner pro- **Act of 1907.**
vided by this section, that his total income from all sources does not exceed two thousand pounds, and that any part of that income is earned income, shall be entitled, subject to the provisions of this section, to such relief from income tax as will reduce the amount payable on the earned income to the amount which would be payable if the tax were charged on that income at the rate of nine pence.

Act of 1907.

(2) The relief given by this section shall be in addition to and not in derogation of any exemption or other relief or abatement under the Income Tax Acts, except that where an individual is entitled to relief from income tax under sec. 8 of the Finance Act 1898 (p. 400), or in respect of the payment of premiums, under sec. 54 of the Income Tax Act 1853 (p. 264) (as extended by any subsequent enactment), relief shall be given under this section only in respect of such earned income (if any) as remains after deducting therefrom the amount on which he is relieved of income tax under the said secs. 8 and 54.

(3) Where relief is given under sec. 8 of the Finance Act 1898, or sec. 54 of the Income Tax Act 1853, by way of repayment of the tax after relief has been given under this section, the amount repaid shall be adjusted so that the total amount of the relief given under this section and under the said secs. 8 and 54 does not exceed the amount which would have been given if the whole relief had been claimed simultaneously.

(4) An individual who desires relief under this section must, in cases where he is required to make a return for the purpose of the assessment of income tax, claim that relief at the time the return is made and must, in any case, claim that relief before the thirtieth day of September in the year for which the tax is charged.

For the purpose of making a claim for relief under this section with respect to income tax charged under this Act for the current year, any individual may, before the thirtieth day of September nineteen hundred and seven substitute a fresh return for any return previously made by him.

(5) An individual shall not be entitled to relief under this section in respect of any income the tax on which he is entitled to charge against any other person, or to deduct, retain, or satisfy out of any payment which he is liable to make to any other person.

(6) Subject to the provisions of this section, all the provisions of the Income Tax Acts which relate to claims for exemption, relief, or abatement, or the proof to be given with respect to those claims, shall apply to claims for relief under this section and the proof to be given with respect to those claims.

(7) For the purposes of this section the expression "income" means income as estimated according to the several rules and directions of the Income Tax Acts; and the expression "earned income" means—

Act of 1907.

- (a) any income arising in respect of any remuneration from any office or employment of profit held by the individual, or in respect of any pension, superannuation, or other allowance, deferred pay, or compensation for loss of office given in respect of the past services of the individual or of the husband or parent of the individual in any office or employment of profit, whether the individual or husband or parent of the individual shall have contributed to such pension, superannuation allowance, or deferred pay or not; and
- (b) any income from any property which is attached to or forms part of the emoluments of any office or employment of profit held by the individual; and
- (c) any income which is charged under Schedules B or D in the Income Tax Act 1853, or the rules prescribed by Schedule D in the Income Tax Act 1842, and is immediately derived by the individual from the carrying on or exercise by him of his profession, trade, or vocation either as an individual, or, in the case of a partnership, as a partner personally acting therein.

In cases where a wife's profits are deemed to be profits of the husband, any reference in this provision to the individual includes either the husband or the wife.

(8) Sec. 34 of the Finance Act 1894 (p. 399) shall cease to have effect so far as it gives relief or abatement to persons who are entitled to relief under sec. 8 of the Finance Act 1898.

Finance Act 1910, sec. 67 :—

Act of 1910,
sec. 67.

Section 19 of the Finance Act 1907 shall apply to any individual who claims and proves, in manner provided by that section, that his total income from all sources exceeds two thousand pounds and does not exceed three thousand pounds, as if one shilling were substituted for ninepence, and as if, as respects any such individual, the thirty-first day of July nineteen hundred and ten were substituted for the thirtieth day of September nineteen hundred and seven.

Every point must be carefully noticed.

Income not to be over £3,000.

The relief does not operate unless the total income does not exceed £3,000.

No relief to "unearned" incomes.

Where a person has both "earned" and "unearned" income the allowances for abatement and life insurance are to be allowed off the earned part, leaving the unearned to pay at the higher rate.

Claim to be made before 30th Sept.

The claim must be made before the 30th September in each year. There is no provision in the Act for any concession in this respect, whatever the circumstances may be, though, for the year 1907-8, claims were admitted by persons who had been prevented from claiming by reason of prolonged illness, or absence abroad.

Importance of lodging *pro forma* claim.

The income for the year is, of course, the statutory income—that is, the amount of profit is to be arrived at on the three years' average (or as the case may be), whether the actual amount in the year may be more or less. To this must be added the investment income *for the year*. There would not appear to be any provision for the case of a person who has, say, £1,000 of "earned" income, and who, having a large interest in a concern which has usually yielded him much more than £2,000 per annum, deems it unnecessary to put in a claim, but finds, after 30th September, that his total income will be less than £3,000.

It would therefore be advisable for any person who, by any conceivable chance, might find his income to fall under

£3,000, to put in a *pro forma* claim which would preserve his rights.

A form (No. 38H) is provided for the purpose.

Clause (5) is necessary, in view of the fact that tax on interest is deductible at the higher rate by the person paying the interest. Since, as a rule, interest is usually paid on loans *secured* in some shape, there will not be any great difficulty under this clause, as the source out of which the interest is paid will usually have borne tax at the higher rate. Where, however (say), a professional man has been able to borrow without security, he will deduct tax at the higher rate, and will have to account for it similarly. Having arrived at the figure for his return in the ordinary way, viz. :—

Tax on
interest to be
paid at 1/2.

Profit after Interest of £100	...	...	£705
Add Interest	...	...	100
			£805

this demand note will not be tax on £805 at 9d., but will be

Tax on Net Profit	...	...	£705 at 9d.
„ Interest	...	...	100 „ 1/2

It may be further noticed that the view of the authorities is that where a partnership paying (unsecured) interest makes a loss, and therefore has to pay upon interest, they cannot set that off against interest on the partners' *private* investments.

**Pension to
bear lower
rate.**

It will be observed that Clause 7 provides that a pension is to bear the lower rate, whether contributed to by the pensioner or not.

**One-man
company.**

The distribution of profits of a "family" limited company are held to be assessable as dividends, and therefore are not "earned," and it is difficult to see how they can be treated otherwise. No doubt where there is a genuine provision under articles for profit to be paid to directors as bonus, &c., regard will be had to such provision, and this may become easier now that the Companies Act permits a "two-man" company, but there is little doubt that any claim based on any such arrangement not absolutely genuine will be resisted by the Crown. In this connection see p. 346 *et seq.*

**Beneficiaries
do not "earn"
their shares.**

Under Clause 7 (e) "earned" income is defined to be income immediately derived by the individual from the carrying on or exercise by him of his trade, &c., either as an individual or as a partner personally acting. This is held (rightly apparently) to exclude shares of profit of a business carried on by trustees and due to any beneficiaries not engaged in the business.

CHAPTER IX.

THE SUPER TAX.

BY Section 66 of the 1910 Act, where the total income of an individual from all sources exceeds £5,000, a supertax of 6d. in the £ is to be charged on all income over £3,000.

Act of 1910,
sec. 66, super-
tax on
incomes over
£3,000.

The "total" income is to be "the total income of that individual from all sources for the previous year, estimated in the same manner as the total income from all sources is estimated for the purposes of exemption or abatement" (but see below), thus :—

In respect of rents, the income is the Schedule A assessment (pp. 420-21).

In the case of profits, it is the Schedule D assessment, irrespective of the actual profit (p. 125 (5)).

The income of the wife is to be aggregated (p. 129 (13)).

In the case of dividends receivable, or annual sums payable, the amount is to be used as applying to the year in which the sum is actually receivable or payable, as the case may be, irrespective of whether it accrued in whole or in part before that year.

Act of 1910,
sec. 68, super-
tax on
incomes over
£3,000.

There is one important exception to ascertaining the income *as for the purpose of abatement, &c.*, viz., life insurance premiums (up to one-sixth of the income) may be deducted.

The section is as follows :—

(1) In addition to the income tax charged at the rate of one shilling and twopence under this Act, there shall be charged, levied, and paid for the year beginning on the sixth day of April nineteen hundred and nine, in respect of the income of any individual, the total of which from all sources exceeds five thousand pounds, an additional duty of income tax (in this Act referred to as a super-tax) at the rate of sixpence for every pound of the amount by which the total income exceeds three thousand pounds.

(2) For the purposes of the super-tax, the total income of any individual from all sources shall be taken to be the total income of that individual from all sources for the previous year, estimated in the same manner as the total income from all sources is estimated for the purposes of exemptions or abatements under the Income Tax Acts; but, in estimating the income of the previous year for the purpose of super-tax :—

- (a) there shall be deducted in respect of any land on which income tax is charged upon the annual value estimated otherwise than in relation to profits (in addition to any other deduction) any sum by which the assessment is reduced for the purposes of collection under section 35 of the Finance Act 1894, or on which duty has been repaid under the provisions of this Act relating to the repayment of duty in respect of the cost of maintenance, repairs, insurance, and management; and
- (b) there shall be deducted the amount of any premiums in respect of which relief from income tax may be allowed under section 54 of the Income Tax Act 1853 (as extended by any subsequent enactment); and

- (c) there shall be deducted in the case of a person in the service of the Crown abroad, any such sum as the Treasury may allow for expenses which in their opinion are necessarily incidental to the discharge of the functions of his office and for which an allowance has not already been made;
- (d) Any income which is chargeable with income tax by way of deduction shall be deemed to be income of the year in which it is receivable, and any deductions allowable on account of any annual sums paid out of the property or profits of the individual shall be allowed as deductions in respect of the year in which they are payable, notwithstanding that the income or the annual sums, as the case may be, accrued in whole or in part before that year.

Act of 1910,
sec. 66, super-
tax on
incomes over
£5,000.

The special provisions as to the assessment of the super-tax **Sec. 72.**
are contained in Section 72, which is as follows :—

(1) The super-tax shall be assessed and charged by the Commissioners for the special purposes of the Acts relating to income tax (in this Act referred to as the Special Commissioners).

(2) Every person upon whom notice is served in manner prescribed by regulations under this section by the Special Commissioners requiring him to make a return of his total income from all sources, or, in the case of a notice served upon any person who is chargeable with or liable to be assessed to income tax under section 41 of the Income Tax Act 1842, or section 24 of the Customs and Inland Revenue Act 1890, as representing an incapacitated, non-resident, or deceased person, of the total income from all sources of the incapacitated, non-resident, or deceased person, shall, whether he is or is not chargeable with the super-tax, make such a return in the form and within the time required by the notice.

Act of 1910,
sec. 72, super-
tax on
incomes over
£5,000.

(3) It shall be the duty of every person chargeable with the super-tax to give notice that he is chargeable to the Special Commissioners before the thirtieth day of September in the year for which the super-tax is chargeable: Provided that for the purpose of this provision the thirty-first day of July nineteen hundred and ten shall, as respects the year beginning on the sixth day of April nineteen hundred and nine, be substituted for the thirtieth day of September of that year.

(4) If any person without reasonable excuse fails to make any return or to give any notice required by this section, he shall be liable to a penalty not exceeding fifty pounds, and after judgment has been given for that penalty to a further penalty of the like amount for every day during which the failure continues.

Any penalty under this provision shall be recoverable in the High Court, or in Scotland in the Court of Session.

(5) If any person fails to make a return under this section, or if the Special Commissioners are not satisfied with any return made under this section, the Special Commissioners may make an assessment of the super-tax according to the best of their judgment.

(6) All provisions of the Income Tax Acts relating to persons who are to be chargeable with duty, assessments, and appeals against those assessments, and to the collection and recovery of duty, and to cases to be stated for the opinion of the High Court shall, so far as they are applicable, apply to the charge, assessment, collection, and recovery of duty under this section, and the Special Commissioners shall, for the purpose of assessment, have any powers of an Inspector or Surveyor of Taxes, and for the purpose of the representation of the Crown on any appeal before the Special Commissioners, any person nominated in that behalf by the Commissioners of Inland Revenue shall have the same powers at and upon the determination of the appeal as a Surveyor of Taxes has at and upon the determination of any appeal under the Income Tax Acts.

(7) The Special Commissioners may amend any assessment made by them under this section, or make an assessment or an additional assessment, during any time within the year of assessment, or within three years after the expiration thereof.

Act of 1916,
sec. 72, super-
tax on
incomes over
£5,000.

(8) The Commissioners may make regulations for the purpose of carrying this section into effect.

It will be observed that the information in respect to super-tax differs essentially from that required in respect to abatement, &c., claims, since, in the latter case, taxed income need not be stated with absolute accuracy, as the abatement or "relief" is the same for all

Information
required to be
exact.

Incomes between £400 and £500

,, £500 and £600, &c.

But, so far as super-tax is concerned, every £1 over £5,000 makes a difference of 6d. one way or the other. It thus becomes of the greatest importance to ascertain the exact amount of the income, and especially so when near £5,000, as the difference of a few pounds of income may bring it within or without the limit.

The Act provides that the statutory "total income" for one year is to be the "total income" for the previous year, "estimated in the same manner as the total income from all sources is estimated for the purpose of exemption or abatement under the Income Tax Acts" (with certain exceptions to be noted later). Therefore profits and salaries are based on the average for the three preceding years, except in the case of salaries payable by companies, &c., which pay on the

Example.

actual salary of the year. Thus, assuming the figures in four different cases to be :—

Year ended	(a)		(b)		(c)	
	Salary of employee of person or firm		Salary of employee of or of director of Co.		1 Business profit	2 Business profit
	£		£		£	£
31 Dec. 1905 ..	400	..	400	..	4,000	.. 7,000
„ 1906 ..	500	..	500	..	5,000	.. 6,000
„ 1907 ..	600	..	600	..	6,000	.. 5,000
„ 1908 ..	700	..	700	..	7,000	.. 4,000
„ 1909 ..	800	..	800	..	8,000	.. 3,000

For 1908-9 in these separate cases the statutory incomes were as follow :—

- In case (a) £500—The average of £400, £500, and £600.
 „ (b) £700—The actual income of the year.
 „ (c) (1) £5,000—The average of £4,000, £5,000, and £6,000.
 „ (c) (2) £6,000—The average of £7,000, £6,000, and £5,000.

So that, for super-tax purposes, for 1909-10 the income in case (c) (1) is £5,000 (*i.e.*, the statutory income of 1908-9), though the actual profit is £8,000. Also in case (c) (2) the income is £6,000, although the actual profit is only £3,000. This produces, apparently, a glaring injustice; but the injustice is more apparent than real. It arises from, and illustrates the effect of, the three years' average, *viz.*, (1) that the amount on which tax is payable has no relation to the profit of the year, (2) that over a series of years one pays on the total actual result, and (3) that one is frequently paying a heavy tax in bad years, which, however, is equalised by the payment of a lighter tax when profits are good, the assessment being based on the past (bad) results.

For this purpose, then,

Example.

- (1) *Income Taxed at Source* is to be the income of the year in which it is receivable, and annual sums paid (mortgage interest, &c.) are to be deducted in respect of the year in which they are payable, without apportionment in respect of the period during which they accrued.
- (2) *Income Tax from Property* is the net assessment under Schedule A (*i.e.*, the rent, less one sixth, &c.), without regard to the actual net receipts.
- (3) *Dividends "Free of Tax"* must be increased by the amount of tax. Thus, a dividend of £500 purporting to be a dividend "free of tax" at 10 per cent. on £5,000, must be considered to be £530 19s. 6d., viz. :—

Dividend	...	...	...	£530	19	6
Tax at 1s. 2d.	...	...	...	30	19	6
				£500 0 0		

The previous illustrations may be amplified. Assume that in cases (c) (1) and (c) (2) the persons have the following actual incomes in 1908 :—

**Information
required to be
exact.**

Information
required
to be exact.

				(c) (1)		(c) (2)
Profit as above	...	...	...	£7,000	...	£4,000
Dividend "free of tax"	...	...	...	500	...	500
House property, say:—						
Rents	...	...	£1,000			
Repairs	...	£300				
Interest	...	100	...	400	...	600
Coupons due October 1 and April 1, credited October 10 and April 10 £120						
Tax at 1s.	...	...	...	6		
				114	...	114
Coupons due November 1 and May 1	...			114	...	114
				£8,328	...	£5,328

Their respective incomes for super-tax purposes for 1909-10
are:—

				(c) (1)		(c) (2)
Profit (assessment of 1908-9)	...	...	...	£5,000	...	£6,000
Dividend (tax 1s.)	...	...	...	526	...	526
Income of house property, <i>assessment</i> of 1908-9, viz., £1,000 less 1-6th (or a further 1-12th if proved in accordance with the Act)						
	...	...	...	833	...	833
Coupons (October and April) <i>receivable</i> in the year 1908-9, though not received till afterwards						
	...	...	...	120	...	120
Coupons (November and May)—Novem- ber 1908 coupons only (as May form part of income of next year, not being <i>receivable</i> in the year)						
	...	...	...	60	...	60
				6,539	...	7,539
Annual interest payable	...	...	...	100	...	100
Income for super-tax purposes	...	...	...	£6,439	...	£7,439

A further very important point which must not be overlooked is the fact that life insurance premiums paid (up to one-sixth of the income) may be deducted in computing the amount of the income ; so that a person whose " total income " is £6,000, and who pays £1,000 premiums, will just bring himself within the limit, and will be able to escape the tax. This is not so when considering " abatement," and a person with £600 per annum, paying £100 premiums, only gets abatement in the £600 scale—not the £500 scale. It will be noticed that—

Information
required
to be exact.

- (1) Assessments are made by the Special Commissioners.
- (2) Every person called upon to do so must make a return, whether chargeable or not.
- (3) A duty is imposed upon every person who is chargeable to give notice thereof by September 30. (For 1909-10 the notice had to be given by July 31 1910, instead of September 30 1909.)
- (4) Failure (without reasonable excuse) to give such notice involves a penalty not exceeding £50, with £50 per day extra after judgment has been given.
- (5) The Commissioners may assess, if not satisfied with the return made, or if no return is made, and may amend any assessment within three years.

Revenue Act,
1911, sec. 11,
wife to make
return when
required.

By the Revenue Act, 1911, sec. 11, it is provided :—

(1) Where a husband is required under subsection (2) of section 72 of the principal Act to make a return of his total income from all sources for the purpose of super-tax, and part of that total income is the income of his wife, the Special Commissioners may, if for any reason they consider that they are unable to obtain a satisfactory return of the wife's income from the husband, require the wife to make a return of her income, and in that case the wife shall be under the like obligation to make a return under the said section as if she were not married, and the husband shall be relieved from any obligation to make such a return as respects the income of the wife.

(2) Where super-tax is charged in a case where the wife has been required to make a return under the foregoing provision, such part of the total sum payable in respect of the super-tax as bears the same proportion to that total sum as the wife's income bears to the total income shall be assessed on and recoverable from the wife in lieu of the husband.

(3) This section shall have effect with respect to the super-tax charged for the year beginning the sixth day of April nineteen hundred and nine and for any subsequent year as if it had been contained in the principal Act, and the provisions of that Act with regard to the assessment and collection of super-tax, and the penalties for failure to make a return, shall apply accordingly.

Interest
payable.

Replying to a question in the House of Commons, in October 1909, the Chancellor of the Exchequer stated that annual interest would be deductible in estimating the income, but not interest on short loans.

Presumably "annual interest" would include any bank interest on which the authorities will repay tax (p. 310), but not such interest as in the *De Peyer* case (p. 310).

Death.

Where a person, whose statutory income for 1910-11 has been £12,000, dies, say, 5th May 1911, the authorities contend that sec. 134 (p. 372) does not apply, and that his estate is liable to super-tax.

The point is going to the Courts on a case stated by the Commissioners.

CHAPTER X.

CONCLUSION.

HAVING now dealt with each Schedule in detail, it only remains to say a few words as to the forms issued by the Board of Inland Revenue in connection with returns, &c.

The principal forms are as follows :—

No. 8. List to be delivered by persons employing others, **Form No. 8.**
&c., required by sec. 21 of the Act of 1907.
(See p. 45.) The full names and residences of the persons employed are to be set out, as also the salaries and emoluments payable to them.

(See also Form No. 46.)

No. 9. Statement to be returned by every *occupier* of a **Form No. 9.**
messuage or tenement only. (See p. 36.) This contains spaces for specifying—

1. Name of owner.
2. Whether the house is used otherwise than as a dwelling-house.
3. Conditions of tenancy.

4. Amount of rent.
5. Full annual value.
6. Amount of poor rate assessment.
7. Amount allowed to tenant by owner in respect of land tax.
8. Whether rates are paid by the tenant or the owner.

The form also contains a "Notice and Declaration of Claim of Exemption or Abatement," to be filled up in cases where the occupier is also the owner, and is entitled to exemption or abatement. This is similar to the Form No. 38 (see p. 497 *et seq.* and Chapter VIII.).

Form No. 9d. No. 9D. Statement to be returned by owner of houses, &c., under the annual value of £10, for which the owner is therefore liable to be assessed (p. 23).

Form No. 9e. No. 9E. Return of rents received and paid, canals, docks, &c.

Form No. 10. No. 10. Statement to be returned by every occupier of lands, tenements, and hereditaments (see p. 36). This contains :—

No. 1. Space to be filled up by owner being also occupier, comprising details of acreage, annual value, tithe rent, deductions on account of land tax, drainage rates, repairing sea walls, &c.

No. 2. Space to be filled up by occupier not being owner, comprising details similar to those above, and to those contained in Form No. 9.

No. 3. Space to be filled up by persons receiving any payment in lieu of tithes.

No. 4. Space to be filled up by or on behalf of the lord of a manor.

No. 5. Space to be filled up by the receiver of any fine on renewal of leases, &c.

No. 6. Space to be filled up by any person entitled to other profits arising from lands, &c., not before stated.

This form also contains a "Notice and Declaration of Claim for Exemption or Abatement."

No. 10B. Form of return—Railways.

Form No. 10b.

No. 10D. Form of return—Farmer electing to be assessed under Schedule D.

Form No. 10d.

No. 11. Form of return for assessment under Schedule D.

Form No. 11.

This contains :—

Rules and regulations, the principal of these being quoted verbatim on p. 124 *et seq.*

Declaration A. Where a return has already been made.

Declaration B. Where the person has not any income to declare.

Claim C. Claim in respect of life insurance.

Claim D. Abatement, &c., claim.

Declaration E. Statement of interest payable.

Declaration F. Where a person is engaged in two or more trades.

Declaration G. Where profits have been included in profits of a firm.

Form No. 11b. No. 11B. Form of return for assessment of concerns described in No. III., Schedule A., of the Act of 1842, viz., quarries, &c., mines, &c., and iron works, &c. (see p. 146).

This is very similar to the Form No. 11.

12. No. 12. Form of return—Schedule E.
13. No. 13. Certificate of interest paid to building society.
- 13a. No. 13A. Alternative arrangements for building society.
16. No. 16. Extract from company's Balance Sheet.
- No. 38 or 38D.

(See next page.)

Year 1911-12.

PAGE I.

Parish _____

Sch. _____ No. of Asst. _____

INCOME TAX, 1911-12.**CLAIM FOR EXEMPTION, ABATEMENT, OR THE RELIEF
ALLOWED IN RESPECT OF EARNED INCOME.**

This form should be used by any person desiring to claim Exemption, Abatement, or the Relief allowed in respect of Earned Income.

In order to obtain the relief allowed to Earned Income a claim must be preferred at the time the Return for Assessment to Income Tax is made, and must in any case be preferred before 30th September in the year for which the tax is charged.

Instructions as to the filling up of the form are given on page 2.

If an allowance is claimed in respect of Life Assurance Premiums, the space at the foot of this page should be filled up.

The Relief in Respect of Children, allowed to an individual whose total income does not exceed £500, may be claimed by completing the declaration on page 4.

The form should be completed, signed by the claimant, and returned to the Surveyor of Taxes, or to the Assessor of Taxes for the Parish in which the claimant resides, within seven days from this date.

Dated _____ 1911.

To _____

**CLAIM FOR ALLOWANCE IN RESPECT OF LIFE ASSURANCE PREMIUMS
OR PAYMENTS UNDER CONTRACTS FOR DEFERRED ANNUITIES.**

The Allowance is authorised only in respect of Premiums paid on the Claimant's own life, or on that of his wife: it is limited to an expenditure on Annual Premiums not exceeding one-sixth of the Claimant's Net Personal Income from all sources, and is not admissible as a deduction in arriving at the total income for the purpose of a claim for Exemption, Abatement, Allowance for Children, or relief in respect of "Earned Income." In order that the Allowance may be granted in respect of such Premiums, the undermentioned particulars should be stated, and the Receipts for the Premiums should, if required, be transmitted to the Surveyor of Taxes.

Name of Person on whose Life the Assurance or Annuity is effected	Name of Assurance Company or Friendly Society	Amount of Premiums claimed as an Allowance from the profits stated on page 3
		£ s d

I claim an Allowance for the foregoing amount of Life Assurance Premiums, and I hereby declare that I have not deducted the amount of such premiums in arriving at the income entered on page 3 of this form.

Signature.

— —

INSTRUCTIONS FOR FILLING UP THIS FORM.

PAGE 2.

Total Exemption may be claimed when the Income from all sources does not exceed £160 per annum.

Abatement of £160 may be claimed when the Income from all sources exceeds £160 but does not exceed £400.

Abatement of £150 may be claimed when the Income from all sources exceeds £400 but does not exceed £500.

Abatement of £120 may be claimed when the Income from all sources exceeds £500 but does not exceed £600.

Abatement of £70 may be claimed when the Income from all sources exceeds £600 but does not exceed £700.

When the Income from all sources does not exceed £3,000, and any part of that Income is *Earned Income*, a Claim may be made for reduction of the Income Tax on the Earned Income to the lower rate applicable thereto. *In order to obtain this relief a Claim must be preferred at the time the Return is made, and must in any case be preferred before 30th September in the year for which the tax is charged.*

Note A.—Where Income is derived from Trade, Profession, Office, Employment or Vocation, state the nature and particulars thereof, and where carried on.

Note B.—If the Income arises from the ownership of Land, Tenements, or Hereditaments, state the precise situation of each Property, with the name of the occupier, and the rent or annual value, *including in the statement particulars of any House, Land, or other Property in the Claimant's own occupation, whether belonging to himself or his wife.* If ground rent, mortgage interest, or other annual charge is payable on any of the property, particulars thereof must be stated in No. 2 on page 3.

Note C.—Profits from the occupation of Land are to be taken at one-third of the full annual value inclusive of Tithe.

Note D.—In the case of Income from Annuities, Interest of Money, or other sources not coming under any of the foregoing heads, *state fully the particulars.* State also in regard to each item under this head whether it has been subjected to Income Tax before receipt. The amount to be entered is the gross amount, and not the net amount received after deduction of the tax.

Note E.—The Income of a married woman living with her husband is deemed by the Income Tax Acts to be his Income, and particulars thereof must be included in any statement of income rendered by him for the purposes of this claim. The only exception to this rule is where a wife earns an income independently of her husband by the exercise of her own personal labour, and the joint income of husband and wife does not exceed £500. In such a case the profit so earned by the wife may be treated as a separate income, and a separate claim may be made in respect thereof.

Note F.—Particulars must be given in space No. 2 of all deductions from the income, such as *ground rent, interest on mortgage or loan (whether secured on property, life assurance policy, reversion or otherwise), annuities, patent royalties, or other annual payments.*

If there be not sufficient room on page 3 to set out the income in full, particulars may be given on a separate sheet and the totals transferred to that page. The declaration at the foot of page 3 must in every case be duly signed.

The penalty for fraudulently concealing or untruly declaring the Income is £20 and treble the duty chargeable in respect of all the sources of Income—5 and 6 Vict., c. 35, sec. 166

By the Finance (1909-10) Act, 1910, it is provided—"If any person for the purpose of obtaining any allowance, reduction, rebate or repayment, in respect of any duty under this Act, either for himself or for any other person, or in any return made with reference to any duty under this Act, knowingly makes any false statement or false representation, he shall be liable on summary conviction to imprisonment for a term not exceeding six months with hard labour.

INCOME TAX, 1911-12.

CLAIM for—

(a) *Exemption or Abatement*, when the Income from all sources does not exceed £700.

(b) *The Relief allowed to Earned Income*, when the Income from all sources does not exceed £3,000.

NOTE.—The Claimant must set forth every source of his Income, with the amount derived from each source, whether tax has been paid on it or not.

No. 1 PARTICULARS OF INCOME.

See Note A.

If you have no
Income falling
under heads (a)
to (e) write
"NONE"
in each space.

(a) From Trade, Profession, Office, Employment or Vocation:— £ s d

See Note B.

The precise
situation of all
property should
be stated.

(b) From Property (including the annual value of the property which I own and occupy):—

See Note C.

(c) From the Occupation of Land:—

See Note D.

State whether
taxed before
receipt, or
not.

(d) From Bank and other Interest, Annuities, Dividends, or other Income not already entered:—

See Note E.

State whether
included
above, or, if
none, write
"NONE."

(e) Wife's Income (giving full particulars and stating whether taxed before receipt, or not):—

Total

K K 2

PAGE 3—(continued).

- No. 2. PARTICULARS of any CHARGES on INCOME.			
(Life Assurance Premiums should not be entered here, but on page 1.)			
See Note F. If there are no Charges, write "NONE." It is not sufficient to leave this space blank.	Nature of the Charge	Name and Residence of Person to whom payable	Annual Amount thereof
			£ s d
	Ground Rent ..		
	Mortgage or Loan, £ at per cent.		
	Other Annual Payment ..		
Total Charges ..			
Total Amount of Income FROM ALL SOURCES less Charges			

I declare that the above statement contains a full, just, and true account and return of the *whole of my Income from every source whatsoever*, for the Year ending the 5th day of April 1912, and I therefore claim the relief to which I am entitled in respect of such Income.

Given under my hand, this day of 191 .

Signed .

(Private) Residence—

Note.—A woman must state after her signature whether *Married, Widow or Spinster.*

I hereby certify that the Claimant appears to be entitled to Exemption (or) an Abatement of £ , and to be charged at the rate of on £ of his Income.

Surveyor of Taxes.

District.

Date.

PAGE 4.

CLAIM FOR RELIEF IN RESPECT OF A CHILD OR CHILDREN.

Any individual who claims and proves that his total income from all sources, although exceeding £160, does not exceed £500, and that he has a child or children *living and under the age of sixteen years on the 6th April 1911*, shall be entitled, in respect of every such child, to relief from Income Tax equal to the amount of income tax upon £10.

No allowance can be made for the year 1911-12 in respect of children born on or before 6th April 1895, or after 6th April 1911.

Full Christian Names and Surname of each child* <i>(Where a stepchild, it should be so stated).</i>	Where residing on 6th April 1911	Date of Birth.	Place of Birth (Precise address to be stated)

I declare that the above-named childrent (in number) are my children within the statutory definition at the foot of this form,* that they were living on the 6th April 1911, and that the above particulars are true and correct in all respects.

-----Signature.

* The full name of each child should be entered on a separate line.

† If one child only, the certificate should be amended accordingly. If more than one, the number should be entered in words.

§ The expressions "child" and "children" in this provision include stepchild or stepchildren, but not illegitimate child nor illegitimate children unless the parents shall, after the birth of such illegitimate child or children, have married each other.

Form No.
38a.

No. 38A. Claims for exemption or abatement—Inland Revenue.

38b.

No. 38B. Claims for exemption or abatement—Inland Revenue (other than official income).

39.

No. 39. Claim for repayment in respect of annual premiums on life insurance policies. This Form is so drawn that the authorities may see that the amount claimed does not exceed tax on one-sixth of the total income.

40.

No. 40. Exemption claim.
This is reproduced on p. 418, &c.

40a.

No. 40A. Abatement claim.

This is similar to No. 40.

In Scotland a Form (No. 40) is used, which is applicable either to a claim for exemption or abatement.

44.

No. 44. Exemption claim on behalf of minors, &c.

44a.

No. 44A. Abatement claim on behalf of minors, &c.

These Forms (Nos. 44 and 44A) are substantially the same as Nos. 40 and 40A respectively.

They are, however, drawn to meet cases where the person claims either for himself or on behalf of a minor, &c., and they contain spaces for answers to the following questions :

Are both or is either of the parents of the child or children dead?

Is the income expended for education or for maintenance?

Has the minor, or have the minors, a vested, or only a contingent, interest in the property?

No. 46.	Notice to officers of corporations and limited companies for returns of salaries (see p. 45).	46.
No. 64.	Notice of charge and day of appeal—Schedules D and E.	64.
No. 65.	Notice of charge by Special Commissioners.	65.
No. 68.	Exemption claim—Dividends applied to charitable purposes. This is somewhat similar to the other exemption claims.	68.
No. 69.	Friendly Societies' claim.	69.
No. 69A.	Trade Union (Provident Funds) claim.	69a.
No. 70.	Exemption claim—Rents, &c., applied to charitable purposes. This contains spaces for full particulars of the rents, &c.	70.
No. 72.	Ministerial expenses, claim of repayment.	72.
Nos. 79 and 79A.	Precepts issued by the Commissioners requiring schedules of particulars on appeals.	79 and 79a.
Nos. 185, 185A, and 189A	} Certificates of Deduction. These are reproduced on p. 423, &c.	185, 185a, and 189a.
No. 185B.	Certificate of deduction—Building Society.	185b.

Copies of any of these Forms may be obtained by any person when required, on application at the office of the Surveyor of Taxes for the district in which the person resides, and it has not therefore been thought needful to

TABLE OF RATES OF INCOME TAX.

FROM FIRST IMPOSITION TO PRESENT TIME.

Years ending 5th April	Rate in the £ of Tax		Exemptions allowed on Incomes under	Abatements allowed	
	On incomes of £100 and under £150	On Incomes of £150 and upwards		On Incomes under	To the extent of
1843		7d.	£150		
1844		7d.	150		
1845		7d.	150		
1846		7d.	150		
1847		7d.	150		
1848		7d.	150		
1849		7d.	150		
1850		7d.	150		
1851		7d.	150		
1852		7d.	150		
1853		7d.	150		
1854	5d.	7d.	100		
1855	10d.	14d.	100		
1856	11d.	16d.	100		
1857	11d.	16d.	100		
1858	5d.	7d.	100		
1859	5d.	5d.	100		
Half-year ending 10th Oct. 1859	8d.	13d.	100		
5th April 1860	5d.	5d.	100		
Years ending 5th April					
1861	7d.	10d.	100		
1862	6d.	9d.	100		
1863	6d.	9d.	100		
1864	7d.		100	£200	£60
1865	6d.		100	200	60
1866	4d.		100	200	60
1867	4d.		100	200	60
1868	5d.		100	200	60
1869	6d.		100	200	60
1870	5d.		100	200	60
1871	4d.		100	200	60
1872	6d.		100	200	60
1873	4d.		100	300	80
1874	3d.		100	300	80
1875	2d.		100	300	80
1876	2d.		100	300	80
1877	3d.		150	400	120
1878	3d.		150	400	120
1879	5d.		150	400	120
1880	5d.		150	400	120

TABLE OF RATES OF INCOME TAX—(continued).

	Rate in the £ of Tax	Exemptions allowed on Incomes under	Abatements allowed	
			On Incomes under	To the extent of
Half-Years ending 5th Oct. 1880 5th April 1881	5d. 7d.	£150 150	£400 400	£120 120
Year ending 5th April 1882	5d.	150	400	120
Half-Years ending 5th Oct. 1882 5th April 1883	5d. 8d.	150 150	400 400	120 120
Year ending 5th April 1884	5d.	150	400	120
Half-Years ending 5th Oct. 1884 5th April 1885	5d. 7d.	150 150	400 400	120 120
Years ending 5th April				
1886	8d.	150	400	120
1887	8d.	150	400	120
1888	7d.	150	400	120
1889	6d.	150	400	120
1890	6½.	150	400	120
1891	6d.	150	400	120
1892	6d.	150	400	120
1893	6d.	150	400	120
1894	7d.	150	400	120
1895	8d.	160	400 500	160 100
1896	8d.	160	400 500	160 100
1897	8d.	160	400 500	160 100
1898	8d.	160	400 500	160 100
1899	8½.			
1900	8d.			
1901	1s. 0d.			
1902	1s. 2d.			
1903	1s. 3d.			
1904	1½d.			
1905	1s. 0d.			
1906	1s. 0d.			
1907	1s. 0d.			
1908	1s. 0d.			
1909	1s. 0d.			
1910	1s. 2d.			
1911	1s. 2d.			
1912	1s. 2d.			

For Exemptions, &c., see p. 403

"earned"
incomes being taxed at 9½. if
total income does not exceed
£2,000

"earned"
incomes 1s. if total exceeded
£2,000 but not £3,000. Super
Tax 6d. on amounts over £3,000
if total over £5,000

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